(25,407)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1916.

No. 577.

THE PENNSYLVANIA RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

OLIVIT BROTHERS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW JERSEY.

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1 UNITED STATE OF AMERICA, *ss:*

The President of the United States to the Honorable the Justices of the Supreme Court of the State of New Jersey, possessors of the record of the proceedings and judgment in an action at law in which Olivit Brothers, a corporation, is plaintiff and the Pennsylvania Railroad Company, a corporation, is defendant, Greeting:

[Seal of the Supreme Court of the United States.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea in the Court of Errors and Appeals, in the last resort in all causes, of the State of New Jersey, wherein final judgment upon return from the said Supreme Court of the State of New Jersey was rendered on the eleventh day of February, A. D., nineteen hundred and sixteen, said Court of Errors and Appeals being the highest Court of law and equity of the said State of New Jersey in which a decision could be had in the action at law in which said Olivit Brothers, a corporation, is appellee or respondent in said Court of Errors and Appeals, and plaintiff below, and said The Pennsylvania Railroad Company, a corporation, is appellant in said Court of Errors and Appeals, and defendant below; which record was by the judgment of said Court of Errors and Appeals remitted to you and is now before you in said Court whereon judgment has been entered in said Supreme Court of the State of New Jersey, pursuant to and as directed by said judgment of said Court of Errors and Appeals, wherein was drawn in question the right, privilege or immunity from liability of said defendant below under statutes of the United States and the decision was against such right, privilege or immunity from liability, manifest error hath happened to the great damage of the said The Pennsylvania Railroad Company, as by its complaint appears; and we being willing that
2 error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf,

Do command you, if judgment be thereupon given, that then, under your seal, distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, in the said Supreme Court, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right and according to the Constitution, laws and customs of the United States should be done.

Witness, Honorable Edward D. White, Chief Justice of the United

States, the 15th day of June, A. D., One thousand nine hundred and sixteen.

JAMES D. MAHER,
Clerk of the United States Supreme Court.

Allowed by
OLIVER WENDELL HOLMES,
Associate Justice of the
Supreme Court of the United States.

3 & 4 The answer of the Justices of the Supreme Court of the State of New Jersey within named. The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Supreme Court of the United States in a certain schedule to this writ annexed, as within we are commanded.

[Seal of the Supreme Court.]

WM. S. GUMMERE, *C. J.*

[Endorsed:] Supreme Court of the United States. Olivit Brothers, a corporation, Plaintiff, Def't in Error, vs. The Pennsylvania Railroad Company, a corporation, Defendant, Pl't'ff in Error. Writ of Error. Returnable July 14, 1916. Vredenburgh, Wall & Carey, 1 Exchange Place, Jersey City, N. J., Attorneys for Plaintiff in Error. June 20, 1916. Received copy. Queen & Stout, Att'ys for Def't in Error.

5 New Jersey Supreme Court.

OLIVIT BROTHERS, a Corporation, Plaintiff-Appellee,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant-Appellant.

On Appeal.

Remittitur.

It appearing by the Remittitur now here returned from the Court of Errors and Appeals, that the judgment of this Court removed by appeal in the above entitled cause, was in and by said Court of Errors and Appeals, affirmed with costs,—

It is Ordered that said Remittitur be filed and that said cause be proceeded with according to law.

Entered February 25, 1916, on motion of—

QUEEN & STOUT,
Attorneys for Plaintiff.

6 OLIVIT BROTHERS, a Corporation, Plaintiff, Defendant in Error,

vs.

THE PENNSYLVANIA RAILROAD COMPANY, a Corporation, Defendant, Plaintiff in Error.

On Writ of Error.

Prayer for Reversal.

To the Honorable the Supreme Court of the United States:

And now comes The Pennsylvania Railroad Company, a corporation, plaintiff in error, and prays for a reversal of the judgment of the Court of Errors and Appeals of the State of New Jersey, and the judgment of the Supreme Court of the State of New Jersey, entered in conformity therewith or in pursuance thereof, in the action brought by the above named defendant in error against the above named plaintiff in error; and it also prays that the order of said Court of Errors and Appeals entered in the office of the Clerk of the Court on the 11th day of February, 1916, ordering that the judgment of the said Supreme Court of New Jersey be in all things affirmed and that the record and proceedings be remitted to the said Supreme Court to be proceeded with in accordance with said order and judgment and the practice of said Court, be reversed, as well as the judgment of said Supreme Court of New Jersey entered by the Clerk of said Court on April 3rd, 1915, which was affirmed by said order and judgment of said Court of Errors and Appeals, in the last resort in all causes.

VREDENBURGH, WALL & CAREY,
ALBERT C. WALL,
JOHN A. HARTPENCE,
Attorneys of the Pennsylvania Railroad Company.

No. 1 Exchange Place, Jersey City, N. J.

[Endorsed:] 34284. 419/28. Supreme Court of the United States. Olivit Brothers, a corporation, Plaintiff, Def't in Error, vs. The Pennsylvania Railroad Company, a corporation, Defendant, Pl't'ff in Error. Prayer for Reversal. Vredenburgh, Wall & Carey, Attorneys for Plaintiff in Error. 1 Exchange Place, Jersey City, N. J. Filed Jun- 24, 1916. Wm. C. Gebhardt, Clerk.

7 UNITED STATES OF AMERICA, *ss:*

To Olivit Brothers, a corporation, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, at the City of Washington, within thirty days from the date hereof, pursuant of a writ of error filed in the office of the Clerk of the Supreme Court of the State of New Jersey, wherein The Pennsylvania Railroad Company, a cor-

poration, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Oliver Wendell Holmes, Associate Justice of the Supreme Court of the United States, this 15th day of June, in the year of our Lord one thousand nine hundred and sixteen.

OLIVER WENDELL HOLMES,
Associate Justice of the Supreme Court of the United States.

[Endorsed:] 34284. 418/28. Supreme Court of the United States. Olivit Brothers, a corporation, Plaintiff, Def't in Error, vs. The Pennsylvania Railroad Company, a corporation, Defendant, Pl't'ff in Error. Citation. Returnable July 14, 1916. Vredenburgh, Wall & Carey, Attorneys for Pl't'ff in Error. 1 Exchange Place, Jersey City, N. J. Service of within citation acknowledged this 20th day of June, A. D. 1916. Queen & Stout, Att'ys for Def't in Error. Filed Jun- 24, 1916. Wm. C. Gebhardt, Clerk.

8 Supreme Court of the United States.

OLIVIT BROTHERS, a Corporation, Pl't'ff, Defendant in Error,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, a Corporation, Defendant, Plaintiff in Error.

On Writ of Error to New Jersey Supreme Court.

Assignments of Error.

To the Honorable the Justices of the Supreme Court of the United States:

And now comes the Pennsylvania Railroad Company, the plaintiff-in-error, and makes and files this, its assignment of error:

There is manifest error in the record and proceedings herein—

(1) Because the Court of Errors and Appeals of the State of New Jersey erred in affirming the refusal of the New Jersey Supreme Court upon the trial of the cause in the Hudson Circuit, at the close of the whole case, to direct a verdict in favor of the defendant and against the plaintiff.

(2) Because the said Court of Errors and Appeals erred in affirming the order of the New Jersey Supreme Court, striking out the interrogatories submitted by defendant to plaintiff, dated March 19, 1915, which were framed to ascertain the ownership of the property involved in the various shipments covered by the suit.

9 (3) Because the said Court of Errors and Appeals erred in affirming the ruling of the New Jersey Supreme Court upon the trial at the Hudson Circuit, sustaining the objections of the plaintiff to the admission of evidence designed to show the owner-

ship of the property involved in said shipments, and also in refusing to direct a verdict in favor of defendant because plaintiff had not shown ownership thereof.

(4) Because the said Court of Errors and Appeals erred in affirming the ruling of the New Jersey Supreme Court upon the trial at the Hudson Circuit, on the motion to direct a verdict in favor of the defendant at the close of the whole case, after the defendant, the present plaintiff in error, had proved a strike, which was an excepted cause in the bills of lading relieving the defendant from liability except in case of negligence, that the burden of proving absence of negligence of the defendant was upon the defendant, and remained there throughout the whole case.

(5) Because the said Court of Errors and Appeals erred in affirming the New Jersey Supreme Court upon the trial at the Hudson Circuit in ruling upon the motion to direct a verdict in favor of the defendant at the close of the whole case, that the burden of proving negligence of defendant did not rest upon the plaintiff after the defendant had proved a strike, which was an excepted cause in the bills of lading relieving it from liability except in case of negligence.

(6) Because the said Court of Errors and Appeals erred in affirming the New Jersey Supreme Court in refusing to rule upon the trial at the Hudson Circuit that, under all the facts of the case it was for the court to determine, as a matter of law, that the defendant was not negligent, and was not liable to the plaintiff for any loss or damage occasioned by the holding back of the watermelons, having proved that the cause thereof was a strike, which, under a stipulation in the bills of lading covering the respective shipments, exempted the defendant from liability in such event, said bills of lading having been issued in accordance with the directions of the Act to Regulate Commerce, its amendments and supplements, and forming a contract between the parties by which their respective rights were to be determined, and in therefore refusing to direct a verdict in favor of the defendant.

(7) Because the burden was upon the plaintiff to establish negligence of defendant resulting in the loss or damage complained of, and the New Jersey Supreme Court at the trial at the Hudson Circuit should have directed a verdict in favor of defendant at the close of the whole case, because plaintiff had failed to sustain that burden and there was not sufficient evidence of such negligence in the case to go to the jury, and that therefore, under the contracts between the parties, made in pursuance of the statutes of the United States, the defendant was not liable to plaintiff for such loss or damage; which said New Jersey Supreme Court refused to do, and which said refusal was affirmed by said Court of Errors and Appeals.

(8) Because said Court of Errors and Appeals erred in affirming the ruling of the New Jersey Supreme Court, upon the trial at the Hudson Circuit, that the plaintiff, the present defendant in error, was entitled to recover as part of its damages in this suit, the amount of the freight charges which accrued upon the shipments in the action under the tariffs and schedules filed by the defendant, the present plaintiff in error, with the Inter-State Commerce Commis-

sion, at Washington, D. C., in accordance with the provisions of the said Inter-State Commerce Acts of Congress.

11 (9) Because the said Court of Errors and Appeals erred in affirming the judgment of the New Jersey Supreme Court, because there is no evidence of negligence of the defendant in the case proximately resulting in the loss or damage complained of, and judgment should have been given by said New Jersey Supreme Court in favor of the defendant and against the plaintiff, whereas judgment was rendered in said New Jersey Supreme Court in favor of the plaintiff and against the defendant, the present plaintiff in error.

And the plaintiff in error prays that the judgment aforesaid may be reversed, annulled and for nothing holden, and that the record be remanded to the Supreme Court of the State of New Jersey in accordance with the judgment and determination of this Court.

ALBERT C. WALL,
Attorneys of Plaintiff in Error.

12 & 13 [Endorsed:] Supreme Court of the United States. Olivit Brothers, a corporation, Pl't'ff-Def't in Error, vs. The Pennsylvania Railroad Company, a corporation, Def't-Pl't'ff-in-Error. On Writ of Error to New Jersey Supreme Court. Assignments of Error. Filed Jul- 12 1916. Wm. C. Gebhardt, Clerk. Vredenburgh, Wall & Carey, Attorneys, 1 Exchange Place, Jersey City, N. J.

14 I, William C. Gebhardt, Clerk of the Supreme Court of the State of New Jersey, do hereby certify, that in the case of Olivit Brothers vs. Pennsylvania Railroad Company, the foregoing and attached hereto is a true copy of the record remitted from the Court of Errors and Appeals of the State of New Jersey to this Court, and also of the Rule on Remittitur, Prayer for Reversal, Citation and Assignments of Error.

In witness whereof I do hereby set my hand and the seal of said Court at Trenton, this twelfth day of July, A. D., nineteen hundred and sixteen.

[Seal of the Supreme Court.]

WM. C. GEBHARDT, *Clerk.*

15 [Endorsed:] New Jersey Supreme Court. Olivet Brothers, a corporation, vs. The Pennsylvania Railroad Company. Copy of Proceedings for Appeal to the United States Supreme Court. Queen & Stout, Attorneys for Plaintiff. Vredenburgh, Wall & Carey, Attorneys for Defendant. Clerk's Office, Trenton.

16 New Jersey Court of Errors and Appeals.

OLIVIT BROTHERS, a Corporation, Plaintiff-Appellee,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant-Appellant.

Action at Law. (7 counts.)

On Appeal from Supreme Court of New Jersey.

OLIVIT BROTHERS, a Corporation, Plaintiff-Appellee,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant-Appellant.

Action at Law. (13 Counts.)

On Appeal from Supreme Court of New Jersey.

CHARLES ALBRECHT, Plaintiff-Appellee,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant-Appellant.

Action at Law. (9 Counts.)

On Appeal from Hudson County Circuit Court.

OLIVIT BROTHERS, a Corporation, Plaintiff-Appellee,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant-Appellant.

Action at Law. (11 Counts.)

On Appeal from Supreme Court of New Jersey.

OLIVIT BROTHERS, a Corporation, Plaintiff-Appellee,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant-Appellant.

Action at Law. (64 Counts.)

On Appeal from Supreme Court of New Jersey.

ANDREW SPADA and DOMINICK SPADA, Partners, Doing Business as Andrew Spada & Co., Plaintiffs-Appellees.
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant-Appellant.

Action at Law. (9 Counts.)

On Appeal from Hudson County Circuit Court.

STATE OF THE CASE.

Queen & Stout, Attorneys for Plaintiffs-Appellees.
Vredenburgh, Wall & Carey, Attorneys for Defendants-Appellants.

17 OLIVIT BROTHERS, a Corporation, Plaintiff,
v.
PENNSYLVANIA RAILROAD COMPANY, Defendant.

Action at Law. (7 Counts.)

18 *Notice of Appeal.*

(Filed April 9, 1915.)

New Jersey Supreme Court.

OLIVIT BROTHERS, a Corporation, Plaintiff,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant.

On Appeal. (7 Counts.)

To Queen & Stout, Esquires, Attorneys for Plaintiff:

Please take notice, that the defendant appeals to the New Jersey Court of Errors & Appeals in the last resort in all causes, from the whole of the judgment entered in this cause.

Dated April 7th, 1915.

VREDENBURGH, WALL & CAREY,
Attorneys for Defendant.

(Endorsed.)

Service of a copy of the within Notice of Appeal is hereby acknowledged this 7th day of April, A. D. 1915.

QUEEN & STOUT,
Attorneys for Plaintiff.

19 *Grounds of Appeal.*

(Filed May 7, 1915.)

New Jersey Court of Errors and Appeals.

OLIVIT BROTHERS, a Corporation, Plaintiff-Appellee,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant-Appellant.

On Appeal from the Supreme Court of New Jersey. (7 Counts.)

The following are the grounds upon which the defendant-appellant appeals to the New Jersey Court of Errors and Appeals in the last resort in all causes from the judgment of the Supreme Court of New Jersey:

1. The Court, upon motion of the plaintiff, struck out, as immaterial, the Interrogatories submitted by defendant to plaintiff, for the purpose of ascertaining before trial, whether or not the plaintiff was the owner of the watermelons involved in the suit at the time they were shipped at the point of origin or at any time prior to the commencement of the action.

2. The Court, at the close of the whole case, refused to direct a verdict in favor of defendant and against plaintiff, when thereunto moved by defendant.

3. Defendant, at the close of the whole case, moved the Court to direct a verdict in favor of defendant and against plaintiff, upon the following grounds:

20 *a.* The testimony in the case showed no evidence of negligence on the part of defendant, which should be submitted to the jury.

b. The defendant having proved that the damage complained of was due to excepted causes in the bills of lading, it was then incumbent upon the plaintiff to show that the damage might have been avoided by the exercise of reasonable care, skill and attention by defendant, which plaintiff had not shown, and that the burden of establishing the absence of such care, skill and attention at that point rested upon plaintiff; that the onus probandi then shifted to plaintiff to establish defendant's negligence in this respect.

c. It did not affirmatively appear from the testimony in the case that the plaintiff was the owner of the watermelons involved in the suit at the times of the shipments or at any time prior to the commencement of the action.

d. Claims in writing for the damage alleged were not filed by plaintiff with defendant within the periods respectively provided for the filing of such claims, in the stipulations in the bills of lading.

Each of which grounds was held by the Court to be erroneous in law, and the motion to direct a verdict in favor of the defendant and against the plaintiff was denied.

4. The Court refused to charge the jury Defendant's Request 9, as follows:

"That the defendant was not bound to carry or transport the watermelons by any particular train, nor within any particular time, nor in time for any particular market, nor otherwise than with reasonable despatch with reference to other business of the defendant, as its general business permitted."

21 5. The Court refused to charge the jury Defe-dant's Request 14, as follows:

"That it was the duty of the defendant to move most perishable fruit first, under the circumstances in these cases, and the holding back of less perishable fruit, viz., the watermelons, until the peaches had been delivered, was not negligence."

6. The Court charged the jury as follows:

"The plaintiff is entitled in the case as a measure of damages, to have you allow the value of the goods at the time and place of shipment, plus the freight on the goods, and plus interest for two years

and seven months. * * * In all cases where, under the rules that I have given you, the plaintiff is entitled to a verdict, you add the freight in, because I think the law is perfectly settled that the freight in a case of this kind is to be added, and that any stipulation which attempted to keep it out would be an invalid stipulation in the law."

7. The Court charged the jury as follows:

(*a*) "And with respect to the other defense offered by the defendant, with respect to some of the cases, that these claims were not filed within ten days, or thirty days or four months, if the defendant makes out—and it is admitted here in the stipulation that in some cases these claims were not filed within those times—then the burden rests upon the plaintiff to go forward with the evidence and to establish by the greater weight of it that there was a waiver of the filing of those within time, if the plaintiff will obviate the disability that arises from the fact that he did not file them within time.

22 "Now a waiver under the law has been held to be the voluntary relinquishment of a known right, and the plaintiff therefore is obliged to produce evidence and make it preponderate in favor of the proposition that the defendant in this case with respect to those claims being presented in writing waived the necessity on the part of the plaintiff of thus presenting them, by showing that the defendant voluntarily relinquished the right that it knew it had to demand the presentation of those claims in writing as a condition precedent to the attaching of the obligation. If the plaintiff has made that out by the greater weight of the evidence why then the fact that the claims were not filed within time will not defeat the right of the plaintiff to recover in those cases, for the waiver operates favorably to the plaintiff and the plaintiff is entitled in those cases to recover if he makes out the waiver by the greater weight of the evidence.

(*b*) "6. That if no claim was filed with the defendant at the point of delivery for loss or damage to the watermelons shipped under bills of lading marked in evidence within ten days or thirty days or four months respectively, as the case may be, from the date of arrival, then the defendant is not liable, as to these shipments respectively, and the burden of proving that the claims were filed within that time is on the plaintiff.

"That rule which I have just charged you undoubtedly states the law, and it is to be taken in connection with the matter that I have already stated to you with respect to the waiver of the filing of those claims, that is to the voluntary relinquishment by the defendant of its right to insist that those claims shall be filed in writing

23 within the time specified. If the plaintiff has made out that waiver—and the burden rests upon the plaintiff in the cases where this rule is applicable to make it out by the greater weight of the evidence—why then that waiver on the part of the defendant does away with the necessity of filing the claim within the time specified and will not defeat the right of the plaintiff to recover. If the plaintiff has not made out any waiver of it, why then manifestly

the defendant in those cases would be entitled to prevail, because by the stipulations admittedly those claims were not filed in writing in certain of the cases. And I might say on this point that you will find in the statement in writing prepared by the defendant for your use to facilitate your labors the cases indicated in which the defendants claim those claims in writing were not filed.

(c) "The plaintiff is entitled in the case as a measure of damages to have you allow the value of the goods at the time and place of shipment plus the freight on the goods and plus interest for two years and seven months. The plaintiff has figured that out on the paper that he has furnished you, and which the eighth juror has, and in whatever cases the plaintiff is entitled to recover, where the defendant has not shown that these claims were not filed within the time limited in the bills of lading, and the plaintiff has not shown that there was a waiver of the right to have those filed within time—I say that wherever there has been no showing of a waiver there you would have to find for the defendant, but where there has been a showing of a waiver under the rules that I have given you,
24 there you would find in favor of the plaintiff and assess the plaintiff's damages at the value at the time and place of shipment plus the freight plus interest at six percent for two years and seven months. Those figures you have. In all the cases where you find that the defendant has made out by the greater weight of the evidence that there was a neglect to file these claims within the times limited—and that is made out in all the cases by stipulation—and where you do not find that the plaintiff has overcome that defense of not filing those claims within time by showing a waiver of it under the rules I have given you, there you find in favor of the defendant with respect to those claims."

8. Said Circuit Court erred in divers other respects.

Dated, May 6, 1915.

VREDENBURGH, WALL & CAREY,
Attorneys for Defendant-Appellant.

(Endorsed.)

Service of a true copy of within Grounds of Appeal is acknowledged this 7th day of May, 1915.

QUEEN & STOUT,
Attorneys for Appellee.

25 *Recognizance.*

(Filed April 10, 1915.)

New Jersey Supreme Court.

OLIVIT BROTHERS, a Corporation, Plaintiff,

vs.

THE PENNSYLVANIA RAILROAD COMPANY, Defendant.

Action at Law. (7 Counts.)

STATE OF NEW JERSEY,
County of Hudson, ss:

Be it remembered, that on this tenth day of April, A. D. 1915, appeared before me Pierre F. Cook, one of the Supreme Court Commissioners of the State of New Jersey, at Jersey City, in said State, The Pennsylvania Railroad Company, a corporation of the Commonwealth of Pennsylvania, by Albert C. Wall, its attorney-in-fact, on its behalf as principal, and the American Surety Company of New York, a corporation of the State of New York, by Arthur Schneider, its Resident Vice-President on its behalf as surety, who jointly and severally did acknowledge said Companies to be indebteded to Olivit Brothers, a corporation, in the sum of two thousand seven hundred and sixty-nine dollars and twelve cents, to be made and levied of their respective goods and chattels, lands and tenements, and real estate, if default be made in the following conditions:

The conditions of the above recognizances are such that—

Whereas, The said Olivit Brothers, a corporation, lately
26 recovered judgment against The Pennsylvania Railroad Company, in an action at law, in the Supreme Court of New Jersey, for the sum of one thousand, three hundred eighty-four dollars and fifty-six cents, damages and costs, as by the record thereof will appear, and,

Whereas, The Pennsylvania Railroad Company has taken an appeal from said judgment to the New Jersey Court of Errors and Appeals, in the last resort in all causes.

Now, therefore, if the said The Pennsylvania Railroad Company shall prosecute the said appeal with effect, and also pay and satisfy, if the said judgment be affirmed, all the damages and costs in the former judgment, and all costs and damages to be awarded for delay of execution, then this recognizance to be void, else to be and remain in full force.

Taken and acknowledged this tenth day of April, A. D. 1915.

PIERRE F. COOK,
Supreme Court Commissioner of New Jersey.

THE PENNSYLVANIA RAILROAD COMPANY,
By ALBERT C. WALL,
Attorney in Fact.

AMERICAN SURETY COMPANY OF NEW YORK,
By ARTHUR SCHNEIDER,
Resident Vice-President.

Attest:
M. L. NIMMO,
Resident Ass't Secretary.

Approved as to form and sufficiency of surety.
PIERRE F. COOK,
Supreme Court Commissioner of New Jersey.

(Authorization and statement of surety annexed.)

27 *Complaint.*

(Filed May 2, 1914.)

Supreme Court of New Jersey, Hudson County.

OLIVIT BROTHERS, a Corporation, Plaintiff,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant.

(7 Counts.)

Plaintiff, a corporation, organized under the laws of the State of New York, having a place of business and office at No. 355 Washington Street in the City, County and State of New York, says that:

First Count.

1. On July 26th, 1912, at Alford's Siding in the State of North Carolina, the plaintiff caused to be delivered to the defendant, which was a common carrier of goods for hire from Alford's Siding aforesaid to Jersey City in this State, one carload of watermelons, of the value of $500., in car ACL 33226, which the defendant then and there received and accepted, as such common carrier, to be transported, carefully and within a reasonable time, to the plaintiff at Jersey City aforesaid, for reward.

2. The defendant, in violation of its undertaking and duty, failed and neglected to carefully transport the said watermelons
28 from Alford's Siding aforesaid to Jersey City aforesaid and failed and neglected to transport the same within a reasonable time; and by reason thereof a large number of said watermelons was wholly lost to the plaintiff and the remainder was delivered by the defendant to the plaintiff at Jersey City in a bad and damaged condition.

Complaint contains six additional counts, same as preceding, covering shipments to Jersey City, N. J., from the points and upon the dates following, which, by consent, are enumerated in this form:

Counts.	Car number.	Date of shipment	From.
2nd	SAL 22640	July 26, 1912	Pates, N. C.
3rd	ACL 20752	July 30, 1912	Alford's Siding, N. C.
4th	ACL 29638	July 30, 1912	Floral Cottage, N. C.
5th	ACL 30833	Aug. 2, 1912	Dundarrock, N. C.
6th	ACL 30957	July 31, 1912	St. Pauls, N. C.
7th	SAL 22585	July 31, 1912	Wagram, N. C.

Plaintiff demands $500 on each count.

QUEEN & SCOTT,
Attorneys of Plaintiff.

29 *Consent.*

(Filed June 15, 1914.)

Supreme Court of New Jersey.

OLIVIT BROTHERS, a Corporation, Plaintiff,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant.

Action at Law. (7 Counts.)

It is hereby consented that the defendant in the above case have ten days from the date hereof in which to answer or take other action to the complaint heretofore filed therein.

Dated, June 6, 1914.

QUEEN & STOUT,
Attorneys for Plaintiff.

30 *Answer.*

(Filed June 15, 1914.)

Supreme Court of New Jersey, Hudson County.

OLIVIT BROTHERS, a Corporation, Plaintiff,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant.

Action at Law. (7 Counts Case.)

Defendant, a body corporate, organized under the laws of the State of Pennsylvania, having a place of business and office at No. 26 Exchange Place, Jersey City, Hudson County, New Jersey, says that:

First Defense.

(1) It denies the truth of the matters contained in the complaint and each and every count thereof.

Second Defense.

(1) Defendant, without admitting that the goods and property were delivered to it and accepted by it to be transported in the manner averred in the complaint, avers that if such property did come to the hands of the defendant for the purpose of the transportation thereof, it did so as to each and every count of said complaint, under the terms and conditions of a certain Bill of Lading, issued to said plaintiffs by the initial carrier of said property, pursuant to
31 the provisions of the Act of Congress of June 20, 1906, (34 Stat. at Large, p. 584, Chap. 3591; U. S. Comp. Stat. Supp. 1911, p. 1288), and the supplements thereto and amendments thereof, commonly designated as the Inter-state Commerce Act, constituting an express agreement between the plaintiff and the defendant, whereby the defendant was to be relieved from any and all liability for damage to the said goods and property resulting from delay in the transportation and delivery thereof if such delay was caused by a strike or strikes among defendant's employees; and defendant asserts that a strike did take place among its employees and continued from the ninth day of July, nineteen hundred and twelve, to the thirty-first day of July, nineteen hundred and twelve, which strike was the cause of the alleged delay if any delay at all occurred as alleged in said complaint.

Third Defense.

(1) Defendant, without admitting that the goods and property were delivered to it and accepted by it to be transported in the manner averred in the complaint, avers that if such property did come to the hands of the defendant for the purpose of the transportation thereof, it did so as to each and every count of said complaint, under the terms and conditions of a certain Bill of Lading issued to said plaintiff by the initial carrier of said property, pursuant to the provisions of the Act of Congress of June 20, 1906, (34 Stat. at Large, p. 584, Chap. 3591; U. S. Comp. Stat. Supp. 1911, p. 1288), and the supplements thereto and amendments thereof, commonly designated as the Inter-State Commerce Act, constituting an express agreement between the plaintiff and the defendant, whereby the
32 defendant was to be relieved from any and all liability for damage to the said goods and property resulting from or occasioned by an accumulation of freight at any point, or to any other causes over which the defendant had no control; and defendant asserts that an accumulation of freight did occur at Jersey City, New Jersey, the point to which the shipments mentioned in the complaint were consigned and at which they were to be delivered, and continued from the ninth day of July, nineteen hundred and twelve, to the thirty-first day of July, nineteen hundred and twelve, over which accumulation the defendant had no control, and which accumulation was the cause of the alleged delay, if any delay at all occurred as alleged in said complaint.

Fourth Defense.

(1) Defendant, without admitting that the goods and property were delivered to it and accepted by it to be transported in the manner averred in the complaint, avers that if such property did come to the hands of the defendant for the purpose of the transportation thereof, it did so as to each and every count of said complaint under the terms and conditions of a certain bill of lading issued to said plaintiff by the initial carrier of said property, pursuant to the provisions of the Act of Congress of June 20, 1906, (34 Stat. at Large, p. 584, Chap. 3591; U. S. Comp. Stat. Supp. 1911, p. 1288), and the supplements thereto and amendments thereof, commonly designated as the Inter-State Commerce Act, constituting an express agreement between the plaintiff and the defendant whereby the defendant was to be relieved from any and all liability for damage to the said goods and property resulting from or occasioned by any cause over which the defendant had no control; and defend-
33 ant asserts that a strike took place among its employees and continued from the ninth day of July, nineteen hundred and twelve, to the thirty-first day of July, nineteen hundred and twelve, over which strike the defendant had no control, and which strike was the cause of the alleged delay, if any delay at all occurred as alleged in said complaint.

Fifth Defense.

(1) No Claim for the loss or damage to the goods or property mentioned in the complaint was made in writing to the agent of the defendant at the point of delivery or consignment of said goods and property by said plaintiff within ten days after the delivery of said property, or after due time for the delivery thereof, by the defendant to the plaintiff, although at the time when said goods and property were delivered to and accepted by the defendant for transportation in the manner averred in the complaint, if ever delivered to or accepted by said defendant for the purpose aforesaid, it was expressly agreed between the plaintiff and defendant that in case of loss or damage to said property, claim therefor should be so made within the time and at the place and in the manner mentioned.

Sixth Defense.

(1) No claim for the loss or damage to the goods or property mentioned in the complaint was made in writing to the defendant at the point of delivery or at the point of origin of said goods and property by said plaintiff within four months after the delivery of said property, or after a reasonable time of delivery thereof had elapsed, by the defendant to the plaintiff, although at the time when said goods or property were delivered to and accepted by the
34 defendant for transportation in the manner averred in the complaint, if ever delivered to or accepted by said defendant for the purpose aforesaid, it was expressly agreed between the plain-

tiff and defendant that in case of loss or damage to said property, claim therefor should be made within the time and at the place and in the manner mentioned or that, if not so made, the defendant should not be liable for such loss or damage.

VREDENBURGH, WALL & CAREY,
Attorneys for Defendant.

35 *Reply.*

(Filed July 28, 1914.)

Supreme Court of the State of New Jersey, Hudson County.

OLIVIT BROTHERS, a Corporation, Plaintiff,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant.

Action at Law. (7 Counts Case.)

The plaintiff denies the truth of the matters contained in the second, third, fourth, fifth and sixth defenses of the answer.

QUEEN & STOUT,
Attorneys of Plaintiff.

36 *Order to Amend.*

(Allowed March 23, 1915.)

New Jersey Supreme Court.

OLIVIT BROTHERS, a Corporation, Plaintiff,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant.

Action at Law. (7 Counts.)

Application having been made by the above named defendant, in the trial of this cause, for leave to amend the Answer in said cause;

It Is Ordered that said Answer be and the same hereby is amended as follows:

Amend Second Defense by changing the date stated therein as the conclusion of the strike, from the "thirty-first" day of July to the "twenty-first."

Amend Third Defense by changing the date stated therein as the conclusion of the accumulation of freight, from "the thirty-first day of July" to "the fifteenth day of August and beyond."

Amend Fourth Defense by changing the date therein stated as the conclusion of the strike from the "thirty-first" day of July, to the "twenty-first."

By inserting an additional defense as follows:

"Seventh Defense.—No claim for the loss or damage to the goods

or property mentioned in the complaint was made in writing to the agent of the defendant at the point of delivery or consign-
37 ment of said goods and property by said plaintiff, within thirty days after the delivery of said property, or after due time for the delivery thereof by the defendant to the plaintiff, although at the time when said goods and property were delivered to and accepted by the defendant for transportation in the manner averred in the complaint, if ever delivered to or accepted by said defendant for the purpose aforesaid, it was expressly agreed between the plaintiff and defendant that, in case of loss or damage to said property, claim therefor should be so made within the time, at the place and in the manner mentioned."

And It Is Further Ordered that the plaintiff's Reply of general denial to said defenses heretofore filed in said cause, stand as its Reply to the defendant's Answer as hereby amended.

WILLIAM H. SPEER, *Judge.*

Dated, March 23, 1915.
Entered, April 1, 1915,
On Motion of—

VREDENBURGH, WALL & CAREY,
Attorneys of Defendant.

38 *Postea.*

(Filed April 3, 1915.)

This case was tried before Judge William H. Speer with a jury at the Hudson Circuit on March 24th, 1915.

The jury rendered a general verdict against the defendant and in favor of the plaintiff for one thousand three hundred and thirty-seven (1,337) dollars and eighteen (18) cents.

WILLIAM H. SPEER, *Judge.*

Judgment.

(Entered April 3, 1915.)

Whereupon it is adjudged that *that* the plaintiff recover of the defendant the sum of One thousand three hundred and thirty-seven dollars and eighteen cents and its costs which are taxed at Forty-seven dollars and thirty-eight cents, making in the whole the sum of one thousand three hundred and eighty-four dollars and fifty-six cents.

$1337.18
47.38

$1384.56

Judgment entered April 3, 1915.

WM. S. GUMMERE, *C. J.*

39 *Interrogatories.*

(Served November 19, 1914.)

Action at Law. (7 Counts.)

OLIVIT BROTHERS, a Corporation, Plaintiff,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant.

New Jersey Supreme Court.

To Olivit Brothers, a corporation, plaintiff.

Please Take Notice, that the defendant demands answers under oath or oaths of such of your officers, agents or employees as have personal knowledge of the facts, to the following interrogatories, within the time required by law:

Interrogatory 1.

Who was the owner of the personal property referred to in each of the Counts of the Complaint in above cause at the time each shipment was made as therein set forth?

Interrogatory 2.

Were the shipments in each and every count in said Complaint made at the times therein set forth to the plaintiff as owner or purchaser thereof, or as agents for the purpose of selling same on commission for the account of the owners or purchasers, respectively?

Interrogatory 3.

If in some of said counts the shipments were made to the
40 plaintiff as owner or purchaser, and in others, as agents, to sell on commission for the account of the owners or purchasers, state in which counts the shipments were to plaintiff as owner or purchaser, and in which as such agent?

Interrogatory 4.

Who was the owner of the personal property referred to in each of the said counts at the time of the commencement of this action?

Interrogatory 5.

If said personal property was sold by plaintiff after delivery by defendant and before commencement of suit, who received the proceeds?

Interrogatory 6.

Was the plaintiff Olivit Brothers, a corporation, ever the purchaser or owner of the personal property referred to in each of said counts,

and if so, state which, and when and in what manner it became such owner or purchaser?

Dated, November 14, 1914.

Yours respectfully,
VREDENBURGH, WALL & CAREY,
Attorneys for Defendant.

41 *Notice.*

(Served November 25, 1914.)

New Jersey Supreme Court, Hudson County.

OLIVIT BROTHERS, a Corporation, Plaintiff,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant.

Action at Law. (7 Counts.)

To Messrs. Vredenburgh, Wall & Carey, Attorneys of Defendant:

Take notice that we shall move before the Honorable William H. Speer, Judge, at the Court House, in the City of Jersey City, on Friday, the 4th day of December, 1914, at ten o'clock in the forenoon or as soon thereafter as counsel may be heard, for an order to strike out the interrogatories served upon the plaintiff on November 19th instant in the above stated action, on the ground that said interrogatories are immaterial and irrelevant and pry into the plaintiff's case and do not relate to the defense of the defendant.

Dated, November 25, 1914.

Yours respectfully,
QUEEN & STOUT,
Attorneys of Plaintiff.

(Continued, by consent, to March 19, 1915.)

42 & 43 *Order Striking Out Interrogatories.*

(Allowed March 19, 1915.)

New Jersey Supreme Court, Hudson County.

OLIVIT BROTHERS, a Corporation, Plaintiff,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant.

Action at Law. (7 Counts.)

This matter coming on to be heard in the presence of Queen & Stout, attorneys of plaintiff, and of Vredenburgh, Wall & Carey, attorneys of defendant, on due notice of a motion to strike out the

interrogatories served by the defendant upon the plaintiff and the court having heard the arguments of counsel for the respective parties and having considered the same and it appearing to the court that the said interrogatories are immaterial to the issue joined in this action:

It is on this nineteenth day of March, one thousand and nine hundred and fifteen, on motion of Queen & Stout, attorneys of plaintiff, ordered that the interrogatories served by the defendant upon the plaintiff be and the same are hereby struck out on the ground that the said interrogatories are immaterial to the issue joined in this action.

We consent to the entry of this order as in time.

VREDENBURGH, WALL & CAREY,
Attorneys of Defendant.

44 OLIVIT BROTHERS, a Corporation, Plaintiff,
v.
PENNSYLVANIA RAILROAD COMPANY, Defendant.

Action at Law. (11 Counts.)

45 *Notice of Appeal.*

(Filed April 9, 1915.)

New Jersey Supreme Court.

OLIVIT BROTHERS, a Corporation, Plaintiff,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant.

On Appeal. (11 Counts.)

To Queen & Stout, Esquires, Attorneys for Plaintiff:

Please Take Notice, that the defendant appeals to the New Jersey Court of Errors & Appeals in the last resort in all causes, from the whole of the judgment entered in this cause.

Dated April 7th, 1915.

VREDENBURGH, WALL & CAREY,
Attorneys of Defendant.

[Endorsed:] Service of a copy of the within Notice of Appeal is hereby acknowledged this 7th day of April, A. D. 1915. Queen & Stout, Attorneys for Plaintiff.

46 *Grounds of Appeal.* *

Same as Olivit v. P. R. R. (7 Counts). See p. 3.

* By consent, the pleadings in the cases following are incorporated, where practicable, *mutatis mutandis*, by reference to the case first printed.

Recognizance.

In the sum of $4241.02. Same as Olivit v. P. R. R. (7 Counts). See p. 9.

Complaint.

(Filed July 21, 1914.)

Supreme Court of New Jersey, Hudson County.

OLIVIT BROTHERS, a Corporation, Plaintiff,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant.

11 Counts.

Plaintiff, a corporation, organized under the laws of the State of New York, having a place of business and office at No. 335 Washington Street in the City, County and State of New York says that:

First Count.

1. On July 15th, 1912, at Pembroke in the State of North Carolina, the plaintiff caused to be delivered to the defendant which was a common carrier of goods for hire from Pembroke aforesaid
47 to Jersey City in this State, one car load of watermelons, of the value of $500.00, in car S. A. L. 16082, which the defendant then and there received and accepted, as such common carrier, to be transported, carefully and within a reasonable time, to the plaintiff at Jersey City aforesaid, for reward.

2. The defendant, in violation of its undertaking and duty, failed and neglected to carefully transport the said watermelons from Pembroke aforesaid to Jersey City aforesaid and failed and neglected to transport the same within a reasonable time; and by reason thereof a large number of said watermelons was wholly lost to the plaintiff and the remainder was delivered by the defendant to the plaintiff at Jersey City in a bad and damaged condition.

Complaint contains ten additional Counts, same as preceding, covering shipments to Jersey City, N. J., from the points and upon the dates following, which by consent are enumerated in this form:

Counts.	Car number.	Date of shipment.	From.
2nd	ACL 34833	July 16, 1912	Pembroke, N. C.
3rd	SAL 17566	July 18, 1912	Laurinburg, N. C.
4th	ACL 26210	July 18, 1912	Laurinburg, N. C.
5th	SAL 18113	July 18, 1912	Laurinburg, N. C.
6th	ACL 32619	Aug. 1, 1912	Maxton, N. C.
7th	ACL 18267	Aug. 1, 1912	Maxton, N. C.
8th	ACL 33493	Aug. 1, 1912	Johns, N. C.
9th	ACL 30276	Aug. 1, 1912	Johns, N. C.
10th	ACL 23150	Aug. 1, 1912	Johns, N. C.
11th	ACL 27576	Aug. 7, 1912	Laurinburg, N. C.

Plaintiff demands $500.00 damages on each count.

QUEEN & STOUT,
Attorneys of Plaintiff.

48 *Consent for Time to Answer.*

Same as Olivit v. P. R. R. (7 counts). See p. 13.

Answer.

Same as Olivit v. P. R. R. (7 counts). See p. 14.

Reply.

Same as Olivit v. P. R. R. (7 counts). See p. 19.

Order to Amend Answer.

Same as Olivit v. P. R. R. (7 counts). See p. 20.

Postea.

(Filed April 3, 1915.)

This case was tried before Judge Williams H. Speer with a jury at the Hudson Circuit on March 20th, 1915.

The jury rendered a general verdict against the defendant and in favor of the plaintiff for two thousand and seventy-three (2,073) dollars and thirteen (13) cents.

WILLIAM H. SPEER, *Judge.*

49 *Judgment.*

(Entered April 3, 1915.)

Whereupon it is adjudged that the plaintiff recover of the defendant the sum of Two thousand and seventy-three dollars and thirteen cents and its costs, which are taxed at the sum of forty-seven dollars and thirty-eight cents, making in the whole the sum

of Two thousand one hundred and twenty dollars and fifty-one cents.

$2073.13
47.38

$2120.51

Judgment entered April 3, 1915.

WM. S. GUMMERE, *C. J.*

Interrogatories, Notice to Strike Out Order Striking Out Interrogatories.

Same as Olivit v. P. R. R. (7 counts). See pp. 23, 25, 26.

50 OLIVIT BROTHERS, a Corporation, Plaintiff,
vs.
PENNSYLVANIA RAILROAD COMPANY, Defendant.

Action at Law. 13 Counts.

51 *Notice of Appeal.*

(Filed April 9, 1915.)

New Jersey Supreme Court.

OLIVIT BROTHERS, a Corporation, Plaintiff,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant.

On Appeal. (13 Counts.)

To Queen & Stout, Esquires, Attorneys for Plaintiff:

Please take notice, that the defendant appeals to the New Jersey Court of Errors & Appeals in the last resort in all causes, from the whole of the judgment entered in this cause.

Dated April 7th, 1915.

VREDENBURGH, WALL & CAREY,
Attorneys for Defendant.

(Endorsed.)

Service of a copy of the within Notice of Appeal is hereby acknowledged this 7th day of April, A. D. 1915.

QUEEN & STOUT,
Attorneys for Plaintiff.

Grounds of Appeal.

Same as Olivit v. P. R. R. (7 counts). See p. 3.

52 *Recognizance.*

In the sum of $5009.08. Same as Olivit v. P. R. R. (7 Counts). See p. 9.

Complaint.

(Filed March 13, 1914.)

Supreme Court of New Jersey, Hudson County.

OLIVIT BROTHERS, a Corporation, Plaintiff,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant.

(13 Counts.)

Plaintiff, a corporation, organized under the laws of the State of New York, having a place of business and office at No. 335 Washington Street in the City, County and State of New York says that:

First Count.

1. On July 29th, 1912, at Hasty in the State of North Carolina, the plaintiff caused to be delivered to the defendant which was a common carrier of goods for hire from Hasty aforesaid to Jersey City in this State, one car load of watermelons, of the value of $500, in car A. C. L. 25691, which the defendant then and there received and accepted, as such common carrier, to be transported, carefully and within a reasonable time, to the plaintiff at
53 Jersey City aforesaid, for reward.

2. The defendant, in violation of its undertaking and duty, failed and neglected to carefully transport the said watermelons from Hasty aforesaid to Jersey City aforesaid and failed and neglected to transport the same within a reasonable time; and by reason thereof a large number of said watermelons was wholly lost to the plaintiff and the remainder was delivered by the defendant to the plaintiff at Jersey City in a bad and damaged condition.

Complaint contains twelve additional Counts, same as preceding, covering shipments to Jersey City, N. J., from the points and upon the dates following, which by consent, are enumerated in this form:

Counts.	Car numbers.	Date of shipment.	From
3rd	ACL 20071	July 20, 1912	Hasty, N. C.
2nd	ACL 38229	July 30, 1912	Hasty, N. C.
4th	SAL 24553	July 27, 1912	Maxton, N. C.
5th	SAL 21998	July 31, 1912	Maxton, N. C.
6th	SAL 21306	Aug. 2, 1912	Maxton, N. C.
7th	SAL 18311	July 26, 1912	Maxton, N. C.
8th	ACL 27244	July 26, 1912	Maxton, N. C.
9th	SAL 18300	July 31, 1912	Maxton, N. C.
10th	SAL 17579	July 27, 1912	Maxton, N. C.
11th	SAL 16346	July 19, 1912	Maxton, N. C.
12th	SAL 22790	July 27, 1912	Maxton, N. C.
13th	ACL 24216	July 30, 1912	Floral Cottage, N. C.

Plaintiff demands $500 damages on each count.

QUEEN & STOUT,
Attorneys of Plaintiff.

54 *Consent for Time to Answer.*

Same as Olivit v. P. R. R. (7 counts). See p. 13.

Answer.

Same as Olivit v. P. R. R. (7 counts). See p. 14.

Reply.

Same as Olivit v. P. R. R. (7 counts). See p. 19.

Order to Amend Answer.

Same as Olivit v. P. R. R. (7 counts). See p. 20.

Postea.

(Filed April 3, 1915.)

This case was tried before Judge William H. Speer with a jury at the Hudson Circuit on March 24th, 1915.

The jury rendered a general verdict against the defendant and in favor of the plaintiff for two thousand four hundred and fifty-seven (2,457) dollars and sixteen (16) cents.

WILLIAM H. SPEER,
Judge.

55 *Judgment.*

(Entered April 3, 1915.)

Whereupon it is adjudged that the plaintiff recover of the defendant the sum of Two thousand Four hundred and fifty-seven dollars and sixteen cents and its costs, which are taxed at the sum of Forty-seven dollars and Thirty-eight cents, making in the whole the sum of two thousand five hundred and four dollars and fifty-four cents.

$2457.16
47.38

$2504.54

Judgment entered April 3, 1915.

WM. S. GUMMERE, *C. J.*

Interrogatories, Notice to Strike Out, Order Striking Out Interrogatories.

Same as Olivit v. P. R. R. (7 counts). See pp. 23, 25, 26.

56 OLIVIT BROTHERS, a Corporation, Plaintiff,
v.
PENNSYLVANIA RAILROAD COMPANY, Defendant.

Action at Law. 64 Counts.

57 *Notice of Appeal.*

(Filed April 9, 1915.)

New Jersey Supreme Court.

OLIVIT BROTHERS, a Corporation, Plaintiff,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant.

On Appeal. (64 Counts.)

To Queen & Stout, Esquires, Attorneys for Plaintiff:

Please take notice, that the defendant appeals to the New Jersey Court of Errors and Appeals in the last resort in all causes, from the whole of the judgment entered in this cause.

Dated April 7th, 1915.

VREDENBURGH, WALL & CAREY,
Attorneys for Defendant.

(Endorsed.)

Service of a copy of the within Notice of Appeal is hereby acknowledged this 7th day of April, A. D. 1915.

QUEEN & STOUT,
Attorneys for Plaintiff.

58 *Grounds of Appeal.*

Same as Olivit v. P. R. R. (7 counts), omitting Paragraph *d.* of Ground 3. The question of filing claims within time is not raised in this case. See p. 3.

Recognizance.

In the sum of $23,320.86. Same as Olivit v. P. R. R. (7 counts). See p. 9.

Complaint.

(Filed March 14, 1914.)

Supreme Court of New Jersey, Hudson County.

OLIVIT BROTHERS, a Corporation, Plaintiff,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant.

(64 Counts.)

Plaintiff, a corporation, organized under the laws of the State of New York, having a place of business and office at No. 335 Washington Street, in the City, County and State of New York, says that:

First Count.

1. On August 1st, 1912, at Maxton in the State of North Carolina, the plaintiff caused to be delivered to the defendant, which
59 was a common carrier of goods for hire from Maxton aforesaid to Jersey City in this State, one carload of watermelons, of the value of $500., in car A. C. L. 29854, which the defendant then and there received and accepted, as such common carrier, to be transported, carefully and within a reasonable time, to the plaintiff at Jersey City aforesaid, for reward.

2. The defendant, in violation of its undertaking and duty, failed and neglected to carefully transport the said watermelons from Maxton aforesaid to Jersey City aforesaid and failed and neglected to transport the same within a reasonable time; and by reason thereof a large number of said watermelons was wholly lost to the plaintiff and the remainder was delivered by the defendant to the plaintiff at Jersey City in a bad and damaged condition.

Complaint contains sixty-three additional Counts, same as preceding, covering shipments to Jersey City, N. J., from the points and upon the dates following, which, by consent, are enumerated in this form:

Counts.	Car number.	Date of shipment.	From
2nd	ACL 18352	July 31, 1912	Parkton, N. C.
3rd	SAL 21144	July 26, 1912	Wagram, N. C.
4th	ACL 21779	Aug. 2, 1912	Parkton, N. C.
5th	ACL 21545	Aug. 8, 1912	Buie, N. C.
6th	ACL 16052	July 26, 1912	Maxton, N. C.
7th	ACL 29559	July 20, 1912	Carmichael's Siding, N. C.
8th	ACL 38360	July 21, 1912	Carlos, N. C.
9th	ACL 16867	July 18, 1912	St. Paul's, N. C.
10th	ACL 28146	July 30, 1912	Red Springs, N. C.
11th	ACL 30936	Aug. 1, 1912	Buie, N. C.
12th	ACL 18409	July 23, 1912	Buie, N. C.
13th	ACL 26948	July 24, 1912	Buie, N. C.
14th	ACL 36403	July 29, 1914	Maxton, N. C.
60			
15th	ACL 18793	July 30, 1912	Red Springs, N. C.
16th	ACL 16583	July 30, 1912	Red Springs, N. C.
17th	ACL 36969	July 31, 1912	Buie, N. C.
18th	ACL 34038	July 31, 1912	Buie, N. C.
19th	ACL 18381	July 23, 1912	Buie, N. C.
20th	ACL 22559	Aug. 1, 1912	Arabia, N. C.
21st	ACL 33742	July 31, 1912	Maxton, N. C.
22nd	ACL 35963	July 29, 1912	Alford's Siding, N. C.
23rd	ACL 27966	July 26, 1912	Maxton, N. C.
24th	ACL 18461	July 23, 1912	Buie, N. C.
25th	ACL 16760	July 23, 1912	Buie, N. C.
26th	ACL 26627	July 22, 1912	Buie, N. C.
27th	ACL 17020	July 22, 1912	Buie, N. C.
28th	ACL 18858	July 23, 1912	Buie, N. C.
29th	ACL 23313	July 24, 1912	Buie, N. C.
30th	ACL 15790	July 22, 1912	Sandy, N. C.
31st	ACL 22718	July 29, 1912	Chalenor, N. C.
32nd	ACL 36522	July 29, 1912	Lumber Bridge, N. C.
33rd	ACL 29526	Aug. 2, 1912	Lumber Bridge, N. C.
34th	SAL 16115	Aug. 2, 1912	Lumber Bridge, N. C.
35th	ACL 21110	July 20, 1912	Lumber Bridge, N. C.
36th	ACL 18629	July 20, 1912	Lumber Bridge, N. C.
37th	ACL 16557	July 27, 1912	Lumber Bridge, N. C.
38th	ACL 32487	July 30, 1912	Covington Siding, N. C.
39th	ACL 33455	July 18, 1912	Lumber Bridge, N. C.
40th	ACL 30188	July 19, 1912	Lumber Bridge, N. C.
41st	ACL 37496	Aug. 3, 1912	Graham, N. C.
42nd	ACL 26170	July 31, 1912	Covington, N. C.
43rd	ACL 31831	July 29, 1912	Covington, N. C.
44th	ACL 35810	July 31, 1912	Covington, N. C.

Counts.	Car number.	Date of shipment.	From
45th	ACL 21515	July 31, 1912	Covington, N. C.
46th	ACL 30666	Aug. 6, 1912	Graham, N. C.
47th	ACL 36761	July 31, 1912	Graham, N. C.
48th	ACL 29298	Aug. 2, 1912	Graham, N. C.
49th	ACL 27721	Aug. 2, 1912	Graham, N. C.
50th	ACL 35669	Aug. 2, 1912	Graham, N. C.
61			
51st	ACL 30744	Aug. 3, 1912	Graham, N. C.
52nd	ACL 29977	Aug. 3, 1912	Graham, N. C.
53rd	ACL 27651	Aug. 3, 1912	Graham, N. C.
54th	ACL 27644	Aug. 5, 1912	Graham, N. C.
55th	ACL 34196	July 31, 1912	Graham, N. C.
56th	ACL 34077	Aug. 1, 1912	Shaw's Siding, N. C.
57th	ACL 23786	Aug. 9, 1912	McNatts, N. C.
58th	ACL 31578	July 27, 1912	Paterson's Siding, N. C.
59th	ACL 30374	July 19, 1912	McNatts, N. C.
60th	ACL 31652	Aug. 2, 1912	McNatts, N. C.
61st	ACL 30674	July 29, 1912	Graham, N. C.
62nd	ACL 36798	Aug. 9, 1912	McNatts, N. C.
63rd	ACL 32426	July 31, 1912	Paterson's Siding, N. C.
64th	ACL 32477	July 19, 1912	McNatts, N. C.

Plaintiff demands $500. damages on each count.

QUEEN & STOUT,
Attorneys of Plaintiff.

62 *Consent for Time to Answer.*

Same as Olivit v. P. R. R. (7 counts). See p. 13.

Answer.

Same as Olivit v. P. R. R. (7 counts). See p. 14.

Reply.

Same as Olivit v. P. R. R. (7 counts). See p. 19.

Order to Amend Answer.

Same as Olivit v. P. R. R. (7 counts). See p. 20.

Postea.

(Filed April 3, 1915.)

This case was tried before Judge William H. Speer with a jury at the Hudson Circuit on March 24th, 1915.

The jury rendered a general verdict against the defendant and in favor of the plaintiff for eleven thousand six hundred and thirteen (11,613) dollars and five (5) cents.

WILLIAM H. SPEER, *Judge.*

63 *Judgment.*

(Entered April 3, 1915.)

Whereupon it is adjudged that the plaintiff recover of the defendant the sum of eleven thousand six hundred and thirteen dollars and five cents and its costs, which are taxed at the sum of forty-seven dollars and thirty-eight cents, making in the whole the sum of eleven thousand six hundred and sixty dollars and forty-three cents.

$11,613.05
47.38

$11,660.43

Judgment entered April 3, 1915.

WM. S. GUMMERE, *C. J.*

Interrogatories, Notice to Strike Out, Order Striking out Interrogatories.

Same as Olivit v. P. R. R. (7 counts). See pp. 23, 25, 26.

64 CHARLES ALBRECHT, Plaintiff,
v.
PENNSYLVANIA RAILROAD COMPANY, Defendant.

Action at Law. 9 Counts.

65 *Notice of Appeal.*

(Filed April 7, 1915.)

Hudson County Circuit Court.

CHARLES ALBRECHT, Plaintiff,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant.

On Appeal. 9 Counts.

To Queen & Stout, Esquires, Attorneys for Plaintiff:

Please take notice, that the defendant appeals to the New Jersey Court of Errors and Appeals in the last resort in all causes, from the whole of the judgment entered in this cause.

Dated April 7th, 1915.

VREDENBURGH, WALL & CAREY,
Attorneys for Defendant.

(Endorsed.)

Service of a copy of the within Notice of Appeal is hereby acknowledged this 7th day of April, A. D. 1915.

QUEEN & STOUT,
Attorneys for Plaintiff.

Filed April 7, 1915.

66 *Grounds of Appeal.*

(Filed May 6, 1915.)

New Jersey Court of Errors and Appeals.

CHARLES ALBRECHT, Plaintiff-Appellee,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant-Appellant.

On Appeal from Hudson County Circuit Court.

The following are the grounds upon which the Defendant-Appellant appeals to the New Jersey Court of Errors and Appeals in the last resort in all causes, from the judgment of the Hudson County Circuit Court:

1. The Court admitted in evidence, over the objection of the defendant, the so-called "refusal slips" given by plaintiff to defendant, whereby plaintiff refused to accept certain of the cars of watermelons referred to in the complaint, when delivery of the same was tendered.

2. The Court, at the close of the whole case, refused to direct a verdict in favor of defendant and against plaintiff, when thereunto moved by defendant.

3. Defendant, at the close of the whole case, moved the Court to direct a verdict in favor of defendant and against plaintiff, upon the following grounds:

a. The testimony in the case showed no evidence of negli-
67 gence on the part of defendant, which should be submitted to the jury.

b. The defendant having proved that the damage complained of was due to excepted causes in the bills of lading, it was then incumbent upon the plaintiff to show that the damage might have been avoided by the exercise of reasonable care, skill and attention by defendant, which plaintiff had not shown, and that the burden of establishing such care, skill and attention at that point rested upon plaintiff; that the onus probandi then shifted to plaintiff to establish defendant's negligence in this respect.

c. Claims in writing for the damage alleged were not filed by plaintiff, with defendant, within the periods respectively provided for the filing of such claims, in the stipulations in the bills of lading.

Each of which grounds was held by the Court to be erroneous in

law, and the motion to direct a verdict in favor of the defendant and against the plaintiff was denied.

4. The Court refused to charge the jury Defendant's Request 9, as follows:

"That the defendant was not bound to carry or transport the water-melons by any particular train, nor within any particular time, nor in time for any particular market, nor otherwise than with reasonable despatch with reference to other business of the defendant, as its general business permitted."

5. The Court refused to charge the jury Defendant's Request 14 as follows:

"That it was the duty of the defendant to move most perishable fruit first, under the circumstances in these cases, and the
68 holding back of less perishable fruit, viz., the water-melons, until the peaches had been delivered was not negligence."

6. The Court charged the jury as follows:

"The plaintiff is entitled in the case, as a measure of damages, to have you allow the value of the goods at the time and place of shipment, plus the freight on the goods, and plus interest for two years and seven months. * * * In all cases where, under the rules that I have given you, the plaintiff is entitled to a verdict, you add the freight in, because I think the law is perfectly settled that the freight in a case of this kind is to be added, and that any stipulation which attempted to keep it out would be an invalid stipulation in the law."

7. The Court charged the jury as follows:

(*a*) "And with respect to the other defense offered by the defendant, with respect to some of the cases, that these claims were not filed within ten days, or thirty days or four months, if the defendant makes out—and it is admitted here in the stipulation that in some cases these claims were not filed within those times—then the burden rests upon the plaintiff to go forward with the evidence and to establish by the greater weight of it that there was a waiver of the filing of those within time, if the plaintiff will obviate the disability that arises from the fact that he did not file them within time.

"Now a waiver under the law has been held to be the voluntary relinquishment of a known right, and the plaintiff therefore is obliged to produce evidence and make it preponderate in favor
69 of the proposition that the defendant in this case with respect to those claims being presented in writing waived the necessity on the part of the plaintiff of thus presenting them, by showing that the defendant voluntarily relinquished the right that it knew it had to demand the presentation of those claims in writing as a condition precedent to the attaching of the obligation. If the plaintiff has made that out by the greater weight of the evidence why then the fact that the claims were not filed within time will not defeat the right of the plaintiff to recover in those cases, for the waiver operates favorably to the plaintiff and the plaintiff is entitled in those cases to recover if he makes out the waiver by the greater weight of the evidence.

(*b*) "6. That if no claim was filed with the defendant at the point of delivery for loss or damage to the watermelons shipped under bills of lading marked in evidence within ten days or thirty days or four months respectively, as the case may be, from the date of arrival, then the defendant is not liable, as to these shipments respectively, and the burden of proving that the claims were filed within that time is on the plaintiff.

"That rule which I have just charged you undoubtedly states the law, and it is to be taken in connection with the matter that I have already stated to you with respect to the waiver of the filing of those claims, that is to the voluntary relinquishment by the defendant of its right to insist that those claims shall be filed in writing within the time specified. If the plaintiff has made out that waiver—and the burden rests upon the plaintiff in the cases where this rule
70 is applicable to make it out by the greater weight of the evidence—why then that waiver on the part of the defendant does away with the necessity of filing the claim within the time specified and will not defeat the right of the plaintiff to recover. If the plaintiff has not made out any waiver of it, why then manifestly the defendant in those cases would be entitled to prevail, because by the stipulations admittedly those claims were not filed in writing in certain of the cases. And I might say on this point that you will find in the statement in writing prepared by the defendant for your use to facilitate your labors the cases indicated in which the defendants claim those claims in writing were not filed.

(*c*) "The plaintiff is entitled in the case as a measure of damages to have you allow the value of the goods at the time and place of shipment plus the freight on the goods and plus interest for two years and seven months. The plaintiff has figured that out on the paper that he has furnished you, and which the eighth juror has and in whatever cases the plaintiff is entitled to recover, where the defendant has not shown that these claims were not filed within the time limited in the bills of lading, and the plaintiff has not shown that there was a waiver of the right to have those filed within time—I say that wherever there has been no showing of a waiver there you would have to find for the defendant, but where there has been a showing of a waiver under the rules that I have given you, there you would find in favor of the plaintiff and assess the plaintiff's damages at the value at the time and place of shipment plus the freight plus interest at six percent for two years and seven months.
71 Those figures you have. In all the cases where you find that the defendant has made out by the greater weight of the evidence that there was a neglect to file these claims within the times limited—and that is made out in all the cases by stipulation—and where you do not find that the plaintiff has overcome that defense of not filing those claims within time by showing a waiver of it under the rules I have given you, there you find in favor of the defendant with respect to those claims."

8. Said Circuit Court erred in divers other respects.

Dated May 6, 1915.

VREDENBURGH, WALL & CAREY,
Attorneys for Defendant-Appellant.

(Endorsed.)

Service of a true copy of within Grounds of Appeal is acknowledged this 6th day of May, 1915.

QUEEN & STOUT,
Attorneys of Appellees.

72 *Order for Time.*

(Allowed April 8, 1915.)

Hudson County Circuit Court.

CHARLES ALBRECHT, Plaintiff,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant.

Action at Law.

Upon good causes shown,
It is ordered that defendant have five days further time from the date hereof within which to file recognizance on appeal in above case.
Dated April 8, 1915. Let this rule be entered.

F. J. SWAYZE, *J.*

Entered April 9, 1915.

On motion of—

VREDENBURGH, WALL & CAREY,
Attorneys for Defendant.

73 *Recognizance.*

(Filed April 12, 1915.)

Hudson County Circuit Court.

CHARLES ALBRECHT, Plaintiff,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant.

Action at Law. (9 counts.)

STATE OF NEW JERSEY,
County of Hudson:

Be it remembered that on this tenth day of April A. D. nineteen hundred and fifteen, appeared before me, Pierre F. Cook, one of the Supreme Court Commissioners of the State of New Jersey, at Jersey City in said State, The Pennsylvania Railroad Company, a corporation of the Commonwealth of Pennsylvania, by Albert C. Wall its

attorney-in-fact, on its behalf as principal, and the American Surety Company, of New York, a corporation of the State of New York, by Arthur Schenider, its resident Vice President, on its behalf, as surety, who jointly and severally did acknowledge said Companies to be indebted to Charles Albrecht in the sum of Thirty-four hundred thirty-four dollars and fifty-four cents, to be made and levied of their respective goods and chattels, lands and tenements and real estate, if default be made in the following conditions:

The conditions of the above recognizance are such that, Whereas the said Charles Albrecht lately recovered judgment against
74 The Pennsylvania Railroad Company in an action at law, in the Hudson County Circuit Court, for the sum of Seventeen hundred and seventeen dollars and twenty-seven cents, damages and costs, as by the record thereof will appear; and

Whereas, The Pennsylvania Railroad Company has taken an appeal from said judgment to the New Jersey Court of Errors and Appeals, in the last resort in all causes;

Now, Therefore, if the said The Pennsylvania Railroad Company shall prosecute the said appeal with effect, and also pay and satisfy, if the said judgment be affirmed, all the damages and costs in the former judgment, and all costs and damages to be awarded for delay of execution, then this recognizance to be void, else to be and remain in full force.

THE PENNSYLVANIA RAILROAD COMPANY,
By ALBERT C. WALL, *Attorney-in-Fact.*
AMERICAN SURETY COMPANY OF NEW YORK,
By ARTHUR SCHNEIDER,
Resident Vice-President.

Attest:
M. L. NIMMO,
Resident Ass't Secretary.
[SEAL.]

Taken and acknowledged this tenth day of April, A. D. 1915.
PIERRE F. COOK,
Supreme Court Commissioner of New Jersey.

Approved as to form and sufficiency of Surety.
PIERRE F. COOK,
Supreme Court Commissioner of New Jersey.

(Authorization and statement of surety annexed.)

75 *Complaint.*

(Filed March 8, 1913.)

Circuit Court Holden in and for Said County.

CHARLES ALBRECHT, Plaintiff,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant.

Action at Law.

STATE OF NEW JERSEY,
County of Hudson, ss:

The Defendant was summoned to answer unto said Plaintiff therein in an action at Law upon the following complaint.

Plaintiff, Charles Albrecht, who resides in the Borough of Brooklyn in the City and State of New York says that:

First Count. 1. On July 11th, 1912, at Pavo in the State of Georgia the plaintiff caused to be delivered to the defendant, who was then and now is a common carrier of goods for hire between Pavo aforesaid and Jersey City in this State, one carload of water melons of the value of five hundred dollars which the defendant then and there accepted and received, as such common carrier, to be transported to the plaintiff at Jersey City aforesaid within a reasonable time, for a reward.

2. The defendant did not transport the said carload of water melons within a reasonable time but on the contrary un-
76 reasonably and negligently delayed the transportation thereof for a period of nine days and during said delay the said water melons decayed and spoiled, all to the damage of the plaintiff, five hundred dollars.

Complaint contains eight additional counts, same as preceding, covering shipments to Jersey City, N. J., from the points and upon the dates following which, by consent, are enumerated in this form:

Count.	Date of Shipment.	From.
2nd.	July 18, 1912	Kline, S. C.
3rd.	July 18, 1912	Kline, S. C.
4th.	July 18, 1912	Ulmers, S. C.
5th.	July 16, 1912	Ulmers, S. C.
6th.	July 16, 1912	Ulmers, S. C.
7th.	July 16, 1912	Ulmers, S. C.
8th.	July 17, 1912	Allendale, S. C.
9th.	July 16, 1912	Barlow, S. C.

QUEEN & STOUT,
Attorneys for Plaintiff.

77 *Amended Answer.*

(Filed September 29, 1913.)

Defendant, a body corporate, organized under the laws of the State of Pennsylvania, having a place of business and office at No. 26 Exchange Place, Jersey City, Hudson County, New Jersey, says that:

First Defense.

(1) It denies the truth of the matters contained in the complaint and each and every count thereof.

Second Defense.

(1) Defendant, without admitting that the goods and property were delivered to it and accepted by it to be transported in the manner averred in the complaint, avers that if such property did come to the hands of the defendant for the purpose of the transportation thereof, it did so under and express agreement between the plaintiff and the defendant whereby the defendant was to be relieved from any and all liability for damage to the said goods and property resulting from delay in the transportation and delivery thereof if such delay was caused by a strike or strikes among defendant's employees; and defendant asserts that a strike did take place among its employees and continued from the ninth day of July nineteen hundred and twelve, to the twenty-first day of July, nineteen hundred and twelve, which strike was the cause of the alleged delay, if any delay at all occurred as alleged in said complaint.

Third Defense.

(1) Defendant, without admitting that the goods and property were delivered to it and accepted by it to be transported in
78 the manner averred in the complaint, avers that if such property did come to the hands of the defendant for the purpose of the transportation thereof, it did so under an express agreement between the plaintiff and the defendant whereby the defendant was to be relieved from any and all liability for damage to the said goods and property resulting from or occasioned by an accumulation of freight at any point, or to any other causes over which the defendant had no control; and defendant asserts that an accumulation of freight did occur at Jersey City, New Jersey, the point to which the shipments mentioned in the complaint were consigned and at which they were to be delivered, and continued from the ninth day of July, nineteen hundred and twelve, to the thirty-first day of July, nineteen hundred and twelve, over which accumulation the defendant had no control, and which accumulation was the cause of the alleged delay, if any delay at all occurred as alleged in said complaint.

Fourth Defense.

(1) Defendant, without admitting that the goods and property were delivered to it and accepted by it to be transported in the manner averred in the complaint, avers that if such property did come to the hands of the defendant for the purpose of the transportation thereof, it did so under and express agreement between the plaintiff and the defendant whereby the defendant was to be relieved from any and all liability for damage to the said goods and property resulting from or occasioned by any cause over which the defendant had no control; and defendant asserts that a strike took place among its employees and continued from the ninth day of July, nineteen hundred and twelve, to the twenty-first day of July, nineteen
79 hundred and twelve, over which strike the defendant had no control, and which strike was the cause of the alleged delay, if any delay at all occurred as alleged in said complaint.

Fifth Defense.

(1) No claim for the loss or damage to the goods or property mentioned in the complaint was made in writing to the agent of the defendant at the point of delivery or consignment of said goods and property by the said plaintiff within ten days after the delivery of said property, or after due time of the delivery thereof, by the defendant to the plaintiff, although at the time when said goods or property were delivered to and accepted by the defendant for transportation in the manner averred in the complaint, if ever delivered to or accepted by said defendant for the purpose aforesaid, it was expressly agreed between the plaintiff and defendant that in case of loss or damage to said property claim therefor should be so made within the time and at the place and in the manner mentioned.

Sixth Defense.

(1) No claim for the loss or damage to the goods or property mentioned in the complaint was made in writing to the defendant at the point of delivery or at the point of origin of said goods and property by said plaintiff within four months after the delivery of said property, or after a reasonable time for delivery thereof had elapsed by the defendant to the plaintiff, although at the time when said goods or property were delivered to and accepted by the defendant for transportation in the manner averred in the complaint, if ever delivered to or accepted by said defendant for the purpose aforesaid, it was expressly agreed between the plaintiff and
80 defendant that in case of loss or damage to said property claim therefor should be so made within the time and at the place and in the manner mentioned or that, if not so made, the defendant should not be liable for such loss or damage.

VREDENBURGH, WALL & CAREY,
Attorneys for Defendant.

Filed Sept. 29, 1913.

By order of
WM. H. SPEER, *Judge.*

81 *Order to Amend.*

(Allowed March 23, 1915.)

Hudson County Circuit Court.

CHARLES ALBRECHT, Plaintiff,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant.

Action at Law. (9 Counts.)

Application having been made by the above named defendant, in the trial of this cause, to amend the amended answer in said cause;

It is ordered that said Amended Answer be and the same hereby is amended as follows:

By inserting an additional defense as follows:

"Seventh Defense: No claim for the loss or damage to the goods or property mentioned in the complaint was made in writing to the agent of the defendant at the point of delivery or consignment of said goods and property by said plaintiff, within thirty days after the delivery of said property, or after due time for the delivery thereof by the defendant to the plaintiff. although at the time when said goods and property were delivered to and accepted by the defendant for transportation in the manner averred in the complaint, if ever delivered to or accepted by said defendant for the purpose aforesaid, it was expressly agreed between the plaintiff and defend-

82 ant that, in case of loss or damage to said property, claim therefor should be so made within the time, at the place, and in the manner mentioned."

And it is further ordered that the plaintiff's Reply of general denial to said defenses heretofore filed in said cause, stand as its Reply to the defendant's Amended Answer as hereby amended.

WILLIAM H. SPEER, *Judge.*

Dated March 23, 1915.

Entered April 3, 1915, on motion of—
VREDENBURGH, WALL & CAREY,
Attorneys of Defendant.

Reply.

(Filed April 16, 1913.)

The plaintiff denies every allegation in the Answer.

QUEEN & STOUT,
Attorneys of Plaintiff.

83 *Judgment.*

(Entered March 26, 1915.)

This action was tried before Judge William H. Speer, with a jury, at the Hudson Circuit, on March 24th, 1915.

This cause having been heard and submitted to the jury, they return their verdict as follows: They say they find the defendant guilty as in the plaintiff's complaint is charge- upon it, and they assess the damages of the plaintiff on occasion of the premises at the sum of One thousand five hundred and Eighty-eight dollars and thirteen cents ($1,588.13).

Whereupon it is adjudged that the plaintiff recover of the defendant the sum of One thousand five hundred and Eighty-eight dollars and thirteen cents ($1,588.13) and his costs, which are taxed at the sum of one hundred and twenty-eight dollars and ninety-four cents ($128.94), making in the whole the sum of One thousand seven hundred and seventeen dollars and seven cents ($1,717.07).

Judgment entered this March 26th, 1915.

WILLIAM H. SPEER, *Judge.*

Attest:

JOHN F. CROSBY, *Clerk.* [SEAL.]

The answer of William H. Speer, Esquire, Judge of the Circuit Court Holden in and for the County of Hudson, and within named *the* record and proceedings of the plaint whereof mentione*d* is within made with all things touching the same I send to the Judges of our Court of Errors and Appeals of the last resort of all causes, at Trenton, N. J., at the day and year within contained, in a certain schedule to this appeal annexed as within I am commanded.

WILLIAM H. SPEER, *Judge.*

84 ANDREW SPADA et al., etc., Trading as ANDREW SPADA & COMPANY, Plaintiff,
v.
PENNSYLVANIA RAILROAD COMPANY, Defendant.

Action at Law. 9 Counts.

85 *Notice of Appeal.*

(Filed April 7, 1915.)

Hudson County Circuit Court.

ANDREW SPADA et al., Partners Trading as ANDREW SPADA & COMPANY, Plaintiffs,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant.

On Appeal. (9 Counts.)

To Queen & Stout, Esquires, Attorneys for Plaintiff:

Please take notice, that the defendant appeals to the New Jersey Court of Errors and Appeals in the last resort in all causes, from the whole of the judgment entered in this cause.

Dated April 7th, 1915.

VREDENBURGH, WALL & CAREY,
Attorneys for Defendant.

(Endorsed.)

Service of a copy of the within Notice of Appeal is hereby acknowledged this 7th day of April, A. D. 1915.

QUEEN & STOUT,
Attorneys for Plaintiff.

Filed April 7, 1915.

86 *Grounds of Appeal.*

Same as Albrecht vs. P. R. R. (See p. 49.)

Order for Time to File Recognizance.

Same as Albrecht vs. P. R. R. (See p. 55.)

Recognizance.

In sum of $4,269.84 filed April 12, 1915. Same as Albrecht vs. P. R. R. (See p. 56.)

87 *Complaint.*

(Filed March 8, 1913.)

STATE OF NEW JERSEY,
County of Hudson, ss:

Circuit Court Holden in and for said County.

ANDREW SPADA and DOMINICK SPADA, Partners Doing Business as ANDREW SPADA & Co., Plaintiffs,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant.

Action at Law.

The defendant was summoned to answer unto said plaintiffs therein in an action at Law upon the following complaint.

Plaintiffs, Andrew Spada and Dominick Spada, partners doing business as Andrew Spada & Co., who reside in the City and State of New York say that:

First Count—1. On July 18th 1912 at Oaktown in the State of Georgia the plaintiffs caused to be delivered to the defendant, who was then and now is a common carrier of goods for hire between Oaktown aforesaid and Jersey City in this State, one carload of water melons of the value of five hundred dollars which the defendant then and there accepted and received, as such common carrier to be transported to the plaintiffs at Jersey City aforesaid within a reasonable time, for a reward.

88 2. The defendant did not transport the said carload of water melons within a reasonable time but on the contrary unreasonably and negligently delayed the transportation thereof for a period of three days and during said delay the said water melons decayed and spoiled, all to the damage of the plaintiffs, five hundred dollars.

Complaint contains eight additional Counts, same as preceding, covering shipments to Jersey City, N. J., from the points and upon the dates following, which, by consent, are enumerated in this form:

Counts.	Date of shipment.	From—
2nd.	July 9, 1912	Cherokee, Ga.
3rd.	July 12, 1912	Ashford, Ala.
4th.	July 12, 1912	Cairo, Ga.
5th.	July 13, 1912	Cairo, Ga.
6th.	July 13, 1912	Cairo, Ga.
7th.	July 13, 1912	Cairo, Ga.
8th.	July 19, 1912	Cairo, Ga.
9th.	July 20, 1912	Pinepark, Ga.

QUEEN & STOUT,
Attorneys for Plaintiff.

Order to Amend.

Same as Albrecht v. P. R. R. (See p. 64.)

Reply.

Same as Albrecht v. P. R. R. (See p. 65.)

89 *Judgment.*

Entered March 26, 1915.

This action was tried before Judge William H. Speer, with a Jury at the Hudson Circuit, on March 24th, 1915.

The cause having been heard and submitted to the Jury, they return their verdict as follows:—They say they find the defendant Guilty as in the plaintiff's complaint is charged upon it, and they assess the damages of the plaintiff on occasion of the premises at the sum of two thousand two hundred and fifteen dollars and eighty-seven cents ($2,215.87).

Whereupon it is adjudged that the plaintiff recover of the defendant the sum of two thousand two hundred and fifteen dollars and eighty-seven cents ($2,215.87) and his costs which are taxed at the sum of one hundred and nineteen dollars and fifteen cents ($119.15) making in the whole the sum of two thousand three hundred and thirty-five dollars and two cents ($2,335.02).

Judgment entered this 26th day of March, 1915.

WILLIAM H. SPEER, *Judge.*

Attest:
JOHN F. CROSBY, *Clerk.* [SEAL.]

90 The answer of William H. Speer, Esquire, Judge of the Circuit Court Holden in and for the County of Hudson, and within named, the record and proceedings of the plaint whereof mentioned is within made with all things touching the same, I send to the Judges of our Court of Errors and Appeals of the last resort of all causes at Trenton, N. J., at the day and year within contained in a certain schedule to this appeal annexed as within I am commanded.

WM. H. SPEER, *Judge.*

91 *Testimony.*

New Jersey Supreme Court.

OLIVIT BROTHERS
vs.
PENNSYLVANIA RAILROAD CO.

Hudson County Circuit Court.

ANDREW SPADA et al., etc., Trading as Andrew Spada Co.,
vs.
PENNSYLVANIA RAILROAD CO.

Hudson County Circuit Court.

CHARLES ALBRECHT
vs.
PENNSYLVANIA RAILROAD CO.

(Four Cases.)

Six cases tried together on Tuesday, March 23, 1915, before Speer, J., and a jury.

Queen & Stout for the plaintiff.

Vredenburgh, Wall & Carey (Mr. Hartpence) for the defendant.

Mr. Hartpence: We desire to move that the six cases, Nos. 112, 113, 114, 115 and 312 and 313, be tried together and that the testimony taken apply to each case in so far as it is applicable.

92 The Court: There will be an order made that that be done. Then I suppose you want to keep the record separate so that there may be a separate verdict entered in each case and a separate judgment entered therein.

Mr. Stout: Yes, sir.

The Court: All right; that may be done.

Mr. Hartpence: We also desire to make some motions with respect to the amendment of the pleadings. I think I can state them generally, and then the record can be straightened out with the stenographer later.

(The amendments as later filed are as follows:)

In the four cases of Olivit Brothers:

Amend second defense by changing the date stated therein as the conclusion of the strike, from the "thirty-first" day of July to the "twenty-first." Amend third defense by changing the date stated therein as the conclusion of the accumulation of freight, from "the thirty-first day of July" to "the fifteenth of August and beyond."

Amend fourth defense by changing the date therein stated as the

conclusion of the strike from the "thirty-first" day of July, to the "twenty-first."

By inserting an additional defense as follows: "Seventh Defense: No claim for the loss or damage to the goods or property mentioned in the complaint was made in writing to the agent of the defendant at the point of delivery or consignment of said goods and property by said plaintiff, within thirty days after the delivery of said property, or after due time for the delivery thereof by the defendant to the plaintiff, although at the time when said goods and property were delivered to and accepted by the defendant for transportation in the manner averred in the complaint, if ever delivered to or accepted by said defendant for the purpose aforesaid, it was expressly agreed between the plaintiff and defendant that, in case of loss or damage to said property, claim therefor should be so made within the time, at the place and in the manner mentioned."

93

In the case of Andrew Spada, et al.:

Amend second defense by stating therein that the strike continued to the twenty-first day of July. Other amendments as in the case of Olivit Brothers.

In the case of Charles Albrecht, insert an additional, seventh defense, as in the case of Olivit Brothers.

Plaintiff's reply of general denial to the defenses heretofore filed in each of the causes is to stand as the reply to the defendant's answer as above mentioned in each case.

Mr. Stout: May it please the Court, the plaintiff and the defendant in the cases of Olivit Brothers against the Pennsylvania Railroad Company, and the plaintiffs and the defendant in the case of Andrew Spada against the Pennsylvania Railroad Company, and the plaintiff and the defendant in the case of Charles Albrecht against the Pennsylvania Railroad Company, have entered into stipulations as to various facts relative to the issues here involved, and I desire now to offer these stipulations in evidence and then I will read them to the jury.

The Court: Very Well.

Mr. Stout: There will be some other stipulations to be offered later.

I suppose we had better get it on the record that case 112 of the Supreme Court, 64 counts, is P-1; stipulation in case numbered 113, 13 counts, is P-2; case No. 114, 11 counts, P-3; case No. 115, 7 counts, P-4; case No. 312, Andrew Spada, 9 counts, P-5; case No. 313, Albrecht Co., 9 counts, P-6.

94

In the Olivit Brothers case against the Pennsylvania Railroad Company, which is No. 112 on the list of causes, I shall read to you the stipulation entered into between the plaintiff in this suit and the defendant:

See Exhibit P-1, page 184.

Now I will read the stipulation in the case No. 113, the 13 counts case of Olivit Brothers against the Pennsylvania Railroad Company.

See Exhibit P-2, page 188.

Now I will read the stipulation in the case No. 114 of Olivit

Brothers against the Pennsylvania Railroad Company, known as the 11 counts case.

See Exhibit P-3, page 192.

Now I will read the stipulation in the case No. 115; of Olivit Brothers against the Pennsylvania Railroad Company, known as the 11 counts case.

See Exhibit P-4, page 196.

Stipulation in the case of Andrew Spada and Dominick Spada, partners doing business as Andrew Spada & Co., against the Pennsylvania Railroad Company, case No. 312 on the list of causes in the Hudson County Circuit Court.

See Exhibit P-5, page 200.

Stipulation in the case of Charles Albrecht against the Pennsylvania Railroad Company, case No. 313 on the present list of causes in the Hudson County Circuit Court.

See Exhibit P-6, page 204.

95 I offer in evidence the 64 bills of lading in the 64 counts case of Olivit Brothers against the Pennsylvania Railroad Company, in compliance with the stipulation.

(64 bills of lading marked as one exhibit, P-7.)

I offer in evidence the 13 bills of lading in the 13 counts case of Olivit Brothers against the Pennsylvania Railroad Company.

(Papers marked P-8.)

I offer in evidence the 11 bills of lading in the 11 counts case of Olivit Brothers against the Pennsylvania Railroad Company.

(Papers marked P-9.)

I offer in evidence the 7 bills of lading in the 7 counts case of Olivit Brothers against the Pennsylvania Railroad Company.

(Papers marked P-10.)

I offer in evidence the 9 bills of lading in the case of Andrew Spada, et al., against the Pennsylvania Railroad Company.

(Papers marked P-11.)

I offer in evidence the 9 bills of lading in the case of Charles Albrecht against the Pennsylvania Railroad Company.

(Papers marked P-12.)

May it please the Court, some of these bills of lading contain the stipulation or condition that the amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property, being the bona fide invoice price, if any, to the consignee, including the freight charges, if prepaid, at place and time of shipment under this bill of lading, unless a lower value has been represented in writing by the shippers or has been agreed upon

96 or is determined by the classifications or tariffs upon which the rate is based, in any of which events such lower value shall be the maximum amount to govern such computation, whether or not such loss or damage occurred from negligence. Other bills of lading do not contain that provision. There is no stipulation, and as I understand it my opponent, Mr. Hartpence, insists that the proper measure of damage is the measure of damage computed upon the basis of the value of the property at the place and time of ship-

ment, and we are willing to try these cases on that theory, and that is the way the stipulations have been drafted.

Mr. Hartpence: Regardless of the stipulation in the bills of lading, where it is absent from the bill of lading or where it differs, the stipulation entered into practically reads that into all the bills of lading.

The Court: All right.

Mr. Stout: The plaintiff and the defendant in the Olivit cases, and the plaintiff and the defendant in the case of Spada against the Pennsylvania, and the plaintiff and the defendant in the case of Albrecht against the Pennsylvania Railroad Company have further stipulated in reference to those cases where the claims were not filed within the time required by the bills of lading, in reference to the ten day and thirty day clause, and I will offer these stipulations in evidence. It does not apply to the 64 counts of Olivit Brothers against the Pennsylvania.

(Stipulations in the Olivit Brothers 13, 11 and 7 counts cases marked respectively P-13, P-14 and P-15; in the Spada case P-16; in the Albrecht case P-17.)

97 In the case of Olivit Brothers against the Pennsylvania Railroad Company, case No. 113, the 13 counts case, I will read the stipulation.

See Exhibit P-13, page 215.

The stipulation in the case of Olivit Brothers against the Pennsylvania Railroad Company, No. 114, the 11 counts case.

See Exhibit P-14, page 216.

I will read the stipulation in the seven counts case of Olivit Brothers against the Pennsylvania Railroad Company, No. 115.

See Exhibit P-15, page 218.

The letters annexed to these stipulations show acknowledgement of the claims involved in these various suits, and also the grounds for declining or rejecting them, and I will read upon what grounds they were declined.

Stipulation in the case of Andrew Spada and Dominick Spada, partners doing business as Andrew Spada & Co., against the Pennsylvania Railroad Company, case 312 on the list of the Hudson County Circuit Court causes.

See Exhibit P-16, page 228.

I will read the letter signed E. Butler, Agent, to Messrs, Andrew Spada & Co., 204 Franklin Street, New York, under date of November 27, 1912.

Stipulation in the case of Charles Albrecht against the Pennsylvania Railroad Company, No. 313 on the list of causes of the Hudson County Circuit Court.

See Exhibit P-17, page 237.

I will read the letter under date of November 15, 1912, signed by E. Butler, Agent, to Charles Albrecht, 110 Nostrand Avenue, Brooklyn, New York.

The other letters enclosed are to the same effect. I now desire to

offer in evidence the refusal slips in the case of Andrew Spada
98 against the Pennsylvania Railroad Company.

Mr. Hartpence: We object to the refusal slips on the ground that they are irrelevant and immaterial, because we apprehend that the refusal slips are offered for the purpose of showing claim on the part of the plaintiffs in this case. If that is true then we make our objection on the grounds stated.

The Court: What is the purpose of the offer?

Mr. Stout: They read: "E. Butler, Agent. I hereby refuse to accept A. C. L. 30698, lading watermelons, account of same being in rotten condition, and inability to realize freight charges. Andrew Spada." Our contention is that that is some evidence of filing a claim. Our contention is that it is for the jury to say whether that is not some evidence of a bringing to the attention of the carrier the loss that we have sustained.

The Court: I think I will admit that.

Mr. Hartpence: Our objection will go to each refusal slip as it is offered?

The Court: Oh, yes.

Mr. Stout:

"JERSEY CITY, July 23, 1912.

E. Butler, Agent:

I hereby refuse to accept A. C. L. 30698, lading watermelons, account of same being in rotten condition and inability to realize freight charges.

(Signed) ANDREW SPADA."

"July 23, 1912.

E. Butler, Agent:

I hereby refuse to accept A. C. L. 24480, lading watermelons, account of same being in rotten condition and inability to realize freight charges.

(Signed) ANDREW SPADA."

"JERSEY CITY, July 23, 1912.

E. Butler, Agent:

I hereby refuse to accept A. C. L. 18316, lading water-
99 melons, account of rotten condition and inability to realize freight charges.

(Signed) ANDREW SPADA.

"JERSEY CITY, July 31, 1912.

M. E. Butler, Agent:

We hereby refuse to accept A. C. L. 28458, lading watermelons, account of rotten condition of lading and inability to realize freight charges.

(Signed) ANDREW SPADA & CO."

I now offer the refusal slips in the case of Charles Albrecht against the Pennsylvania Railroad Company, case No. 313.

Mr. Hartpence: The same objection is made as was made to the offer in the Spada case.

The Court: I do not admit that, Mr. Hartpence, on the theory that they are a claim in writing, for they are not. I will decide that instantly. There is not any question in my mind about that at all. But I admit them as being one fact in a series of facts which may tend to show a waiver on the part of the railroad company of the necessity for filing the claim within time. That is the whole theory upon which I admit it, and I put it in that way. A refusal slip is in no sense a claim for anything at all; it simply is what it purports to be, a refusal slip; but it is a fact and it is a fact that is brought to the attention of the defendant company through its appropriate agent, and it is a fact in the light of which the agent acts and in the light of which the interpretation of that act will have to be made by the jury afterwards in case I come to submit it to them on the theory of waiver. It is purely on that theory that I admit it.

Mr. Hartpence: We desire to have our objection noted.

100 The Court: Surely. I want it noted. I only indicate that so that both you and the court above may know precisely the ground upon which I admit it and so that there may be no notion that I admit it because I think it has the slightest resemblance to a claim, because I do not think it has.

Mr. Stout:

"JERSEY CITY, N. J., July 13, 1912.

E. Butler, Agent:

I hereby refuse to accept A. B. A. 20917, lading watermelons, account of rotten condition of lading and inability to realize freight charges.

(Signed) C. ALBRECHT.

"JERSEY CITY, N. J., July 26, 1912.

M. E. Butler, Agent:

I hereby refuse to accept Sou. 35039, lading watermelons, account of rotten condition and inability to realize freight charges.

(Signed) C. ALBRECHT."

"JERSEY CITY, N. J., 7/26/1912.

Mr. E. Butler, Agent:

I hereby refuse to accept S. A. L. 22453, lading watermelons, account of rotten condition of lading and inability to realize freight charges.

(Signed) C. ALBRECHT."

"JERSEY CITY, N. J., July 27, 1912.

Mr. E. Butler, Agent:

I hereby refuse to accept S. A. L. 1584, lading watermelons, account of rotten condition of lading and inability to realize freight charges.

C. ALBRECHT."

"JERSEY CITY, N. J., 7/26/1912.

Mr. E. Butler, Agent:

I hereby refuse to accept S. A. L. 23256, lading watermelons, account of the rotten condition of lading and inability to realize freight charges.

C. ALBRECHT.

"JERSEY CITY, N. J., July 26, 1912.

M. E. Butler, Agent:

I hereby refuse to accept Sou. 38132, lading watermelons, account of rotten condition and inability to realize freight charges.

(Signed) C. ALBRECHT."

101 "JERSEY CITY, N. J., July 27, 1912.

E. Butler, Agent:

I hereby refuse to accept Sou. 25284, lading watermelons, account of same being in rotten condition of lading and inability to realize freight charges.

(Signed) C. ALBRECHT."

"JERSEY CITY, N. J., July 27, 1912.

Mr. E. Butler, Agent:

I hereby refuse to accept Sou. 32937, lading watermelons, account of rotten condition and inability to realize freight charges.

(Signed) C. ALBRECHT."

"JERSEY CITY, N. J., July 27, 1912.

Mr. E. Butler, Agent:

I hereby refuse to accept S. A. L. 24096, lading watermelons, account of rotten condition of lading and inability to realize freight charges.

(Signed) C. ALBRECHT."

Mr. Stout: We would like it entered on the record that the refusal slips read in the Spada case and in the Albrecht case were the refusal slips filed by the plaintiffs in the respective suits with the defendant at the time of the refusal.

Mr. Hartpence: With the agent.

The Court: All right.

Mr. Stout: We further desire to have noted on the record that the damage that we are claiming in all of these suits is the damage caused by the delay in the transportation of the watermelons while they were in the possession of the defendant company, due to delay, and not to any other cause; damage due to delay in transportation and not to any other cause.

The Court: I think your stipulations in effect provide that, because as I recall the reading of them it was said that they reached Edgemoor in good condition and that then they were transported

102 to Jersey City and that the ordinary time under the most favorable circumstances was seven hours, and that when they got here they were damaged.

Mr. Stout: But the Pennsylvania Railroad Company thought that might bind them to other damages, that even though they were in good condition there—to some other damage rather than the result of delay.

The Court: Well, substitute for "delay" in your statement, "decay due to delay." That is what you mean, isn't it?

Mr. Hartpence: Yes; not to rough handling or any other cause.

The Court: I understand it.

Mr. Stout: I desire to read into the evidence Rule 1 of the Southern Classification.

The Court: That is the one referred to in your stipulation?

Mr. Stout: Yes. "The reduced rate specified in this classification will apply only on property shipped subject to the conditions of the carrier's bill of lading. Property carried not subject to the conditions of the carrier's bill of lading will be at the carrier's liability, limited only as provided by common law and by the laws of the United States and of the several states in so far as they apply. Property thus carried will be charged ten per cent. higher, subject to a minimum increase of one per cent per hundred pounds than if shipped subject to the conditions of the carrier's bill of lading."

Plaintiffs rest.

103 *Defendant's Case.*

ROBERT FENN, sworn.

Direct examination by Mr. Hartpence:

Q. What is your business?

A. I am employed by the Pennsylvania Railroad at Second and Henderson Streets, Jersey City, in the perishable freight department.

Q. How long have you been employed there?

A. Ten years.

Q. What was your position there in the months of July and August, 1912?

A. Clerk in the same department.

Q. Mr. Fenn, I show you stipulation, P-1, and call your attention particularly to the blueprint and also P-2, P-3, P-4, P-5 and P-6, the blueprints on those exhibits, calling your attention to those blueprints, and ask you whether or not you have examined those blueprints or replicas of them before this trial.

A. I have.

Q. Do you keep any records in your work at the Pennsylvania Railroad freight department?

A. I keep all these records.

Q. What records do you keep?

A. Records of the delivery, placing of all cars of watermelons, perishable freight.

Q. That come in to the Jersey City yard?

A. To the Jersey City yard, yes, sir.

Q. How long have you done that?

A. About five years.

Q. Mr. Fenn, have you any recollection of a strike or any labor disorders in the month of July, 1912, at pier 29, Pennsylvania Railroad, New York?

A. Yes, sir.

Mr. Stout: I would like to ask the witness whether he knows of his own knowledge.

The Court: You may ask him that.

104 Mr. Stout: Do you know this of your own knowledge, Mr. Fenn?

The Witness: Yes, sir.

Mr. Stout: Were you at pier 29?

The Witness: No, sir.

Q. Did that strike in any way, to your knowledge, affect the general situation in the freight delivery yard of the Pennsylvania Railroad at Second and Henderson Streets?

Mr. Stout: I object to that. I think he ought to testify as to the results of the strike, if there was a strike, or how——

The Court: That is what the effects are, the result.

Mr. Stout: He says, "Did it affect?"

The Court: Yes; that is what affect means.

Mr. Stout: I will withdraw the objection.

A. Yes, sir; it did affect the delivery of freight in the Jersey City yard.

Q. Will you tell us in what way it affected it?

A. Well, we had to deliver peaches consigned to New York that would have gone to pier 29, we had to deliver them there in Jersey.

Q. Did it in any way affect the handling of your watermelon cars?

A. Yes, sir.

Q. In what way did it affect them?

A. Well, these peaches were delivered at——

Q. In what way did it affect the watermelon cars?

A. Well, the watermelons were delivered in the day and the peaches were delivered at night, and everything got blocked, congested, that is watermelons could not get in fast enough.

Q. And what became of them when they could not get in?

A. Well they were blocked up several places along the road, in the storage yard; they took their turn to come down to the ball ground.

105 The Court: By the ball ground you mean Second and Henderson Streets?

The Witness: Yes, sir.

Q. Now, Mr. Fenn, were the cars which are enumerated in the blueprints which I have shown to you, attached to exhibits P-1, 2, 3, 4, 5 and 6, affected in the way you have stated?

A. Yes sir.

Q. All of them?

A. Yes, sir.

Cross-examination by Mr. Stout:

Q. How long did the so-called labor disorder last?

A. The strike itself lasted from July 9th to July 21st.

Q. And how frequently during the period from July 9th to July 21st, 1912, were you at pier 29?

A. I was not at pier 29 at any of that time.

Q. How did you know that there was a strike or labor disorder at pier 29?

A. Well, it had been rumored some time before, and the papers were full of it, the newspapers.

Mr. Stout: I think on that ground I will move to strike out his testimony as to the strike. It seems to me all he knows is rumors and newspaper reports.

The Witness: Well, I had a great deal of extra work to do.

The Court: What is your answer to the motion made now, Mr. Hartpence?

Mr. Hartpence: I did not understand that Mr. Fenn had completed his answer when Mr. Stout broke in. If he had, of course that is different.

The Court (to the witness): You had answered all you wanted to say about it, hadn't you?

The Witness: Now, when I say I had plenty of more extra work to do, yes, sir.

106 The Court: But you had not seen any part of the strike with your own eyes, had you?

The Witness: Not in New York, no, sir.

The Court: You had not?

The Witness: No, sir.

The Court: Then all that evidence with respect to the fact of the strike will be stricken out. The fact that there was extra work at that time he may prove. The fact that cars were congested along the track he may prove.

Mr. Hartpence: Yes, sir; I think that will cover it.

The Court: All those things undoubtedly he may swear to, if he knows them, but the fact of the strike goes out, because he had no knowledge of it.

Mr. Hartpence: Yes, sir. Do I understand that that portion of his testimony which relates to the congestion of cars may stand, but the mere fact that it was due to the strike is stricken out?

The Court: I see no objection to letting the evidence that there was congestion of those cars on the track and all that sort of evidence stand, but the fact that there was a strike and that this congestion was due to a strike will be stricken out, because he does not know anything about that.

Mr. Hartpence: All right.

Q. During the period from July 9th to July 21st, 1912, you were employed at the Second and Henderson Streets freight station of the Pennsylvania Railroad?

A. Yes, sir.

Q. And what were your hours?

A. From seven until six.
Q. Seven in the morning till six in the evening?
A. Some nights I put in longer hours—yes, sir.
107 Q. And during that period of the day no peaches were handled, were they?
A. No, sir; they were generally handled at night.
Q. So then how can you testify that peaches were put on these tracks during the night if you were not there?
A. I had to keep the record of them. The night people turned that all over to me every morning.
Q. Have you a record of it?
A. Yes, sir.

Mr. Stout: Then I move to strike out his testimony on the ground that the record, if he is going to testify from such evidence, is the best evidence of what was done.
The Court: Well, if the only knowledge he has is the record, I suppose the record is the best evidence of it.
Mr. Hartpence: We are not particularly concerned with that portion of the testimony where he referred to the delivery of peaches.
The Court: Then I will strike that part out, if that is what your motion is, Mr. Stout.
Mr. Stout: Yes.
The Court: All right.

Q. How long did this congestion which you speak of last? When did it begin and when did it end?
A. Well, the congestion started right after the strike started.
Q. Well, give us dates.
A. Well, about July 10th.
Q. And lasted until when?
A. All summer.
Q. You mean up to the first of September?
A. Yes, sir.
Q. And during the period of this so-called congestion you delivered watermelons to the various consignees on the tracks in the yard at Second and Henderson Street-?
A. I delivered cars, in the office, to them, yes, sir.
108 Q. Did you know anything about the condition in the yard from your own knowledge?
A. Yes, sir.
Q. In what way?
A. Well, I used to go out in the yard quite frequently.
Q. You went out what time in the day?
A. All times.
Q. All times in the day; what conditions did you see in the yard?
A. Every track was filled.
Q. Filled with what?
A. Cars of watermelons; cars of freight.
Q. Do you know as a matter of fact that there were certain tracks in that yard designated during the watermelon season as watermelon tracks?
A. Yes, sir.

Q. Do you know the numbers of those tracks?
A. Yes, sir.
Q. What are the numbers of those tracks?
A. 20, 19——

Mr. Hartpence: I object unless it is limited to the time of the congestion.

Q. During the period of 1912.

The Court: From the 9th to the 21st of July, 1912, is the time he has testified to.

Mr. Hartpence: He did testify that the congestion lasted till about September 1st.

Mr. Stout: Yes; he said from about the 10th of July to the 1st of September.

The Court: Well from the 9th of July to September 1st.

A. (Continuing:)—18, 17, 16.
Q. Not 15?
A. Well, it might have been; I am not positive.
Q. And during this period of congestion these tracks were used for peaches billed to Pier 29, New York City?
A. At night.

Mr. Hartpence: That is obejcted to on the ground that Mr.
109 Stout has already stricken from the record this witness' testimony on that point because he had no knowledge of it.

The Court: Mr. Stout asked to have it stricken out because he did not have the record. If your objection now is that this is not the best evidence of it I will sustain the objection.

Mr. Hartpence: I object to it on the ground it is not competent.

Mr. Stout: He has since testified that he was in the yard off and on.

The Court: And the reason why I struck it out was because you asked him if they were billed there, and the best evidence of where they were billed is the r-cord.

Q. Do you know whether there were any cars in the Second and Henderson Street yard during the period of this congestion which were billed to pier 29; do you know of your own knowledge?
A. What do you mean; in the day time?
Q. Yes.
A. Sure there was; there was cars there to be re-iced.
Q. What?
A. There were cars there to be re-iced.
Q. Re-iced car billed to pier 29?
A. Cars there to be re-iced; the ice-house is in that yard.
Q. My question is, do you know whether they were billed to pier 29?
A. Yes, sir.

Mr. Hartpence: I object as not cross examination.

Q. How do you know that?
A. I saw the tickets on them.

The Court: What is the point of your objection?

Mr. Hartpence: Not proper cross examination. The ex-
110 amination of this witness in chief, as I understand it now was limited to his statement that there was a congestion in the freight and that it continued from a certain date to a certain date and affected all the cars in question. Now it seems to me that the cross examination is leading up into the plaintiff's case rather than to any matter which we have set up in defense.

The Court: But he has a perfect right to find out what he knows of the congestion by finding out what cars were there, where the cars were going to, and what the intimacy of that knowledge is with respect to those cars. He has a right to show that. Now he says that he knows there were cars on those tracks and they were billed to pier 29, because they had tickets on them, and he saw them. Now counsel has a right to show any fact which tends to indicate the intimacy of his knowledge with respect to the condition that was present at that time.

Mr. Hartpence: Yes, sir; I cannot object to that, but your Honor will recall Mr. Stout's opening; he stated that he would show that perishable fruit of other kinds was delivered from the congested yard, and it seems to me that was a part of his case and that he cannot bring it out now on the defense by cross examination of a witness who was not interrogated upon that point in the examination in chief.

The Court: That may be so, but the point of your objection does not reach that. The point of your objection simply amounts to this, that this evidence, which is clearly relevant, as being a probing of the mind of the witness with respect to the intimacy of his
111 knowledge has also another effect. I do not see how that can make it bad.

Mr. Hartpence: My objection of course goes to the ground that I have stated.

The Court: I understand.

Q. The delivery of the peaches on these watermelon tracks in the Second and Henderson Street yard prevented the delivery of watermelons, did it not?

Mr. Hartpence: Now I object on several grounds, which I will state. First, that there is no evidence, as I recall it, thus far, that peaches were delivered from watermelon tracks at the congested yard. The most that I recall is that cars were billed to pier 29, which this witness saw.

The Court: And that those cars that were billed to pier 29 were there to be re-iced, and that they were on those watermelon tracks.

Mr. Hartpence: Yes, sir; and Mr. Stout's question assumes they were delivered on the watermelon tracks.

Mr. Stout: I will withdraw the question and put it this way:

Q. Did these cars of peaches and other cars which were on the watermelon tracks prevent the delivery of the watermelons?

A. In some cases, yes, sir.

Q. And wasn't the whole congestion due to the fact that com-

modities which were billed to pier 29 were during the period of this congestion brought to the Second and Henderson Street yard; wasn't that the cause of the congestion?

A. What do you mean; what commodities?

Q. Commodities which were billed to pier 29.

A. Only peaches.

Q. And so work down to the result that the commodities
112 which were billed to pier 29, being brought to the Second and Henderson Street yard, brought about this congestion?

A. Yes, sir.

The Court: I suppose you would be willing to admit that?

Mr. Hartpence: I made no objection to it. Yes, sir, I will admit it.

WILLIAM WATSON, sworn.

Direct examination by Hartpence:

Q. What is your occupation?

A. General foreman, Pennsylvania Railroad freight station, Jersey City, Second and Henderson Street yard.

Q. How long have you been employed there?

A. I have been employed at that station for about twenty-six years.

Q. What was your position there in the months of July and August, 1912?.

A. General foreman.

Q. As general foreman what were your duties?

A. Well, general supervision of the work down stairs and in the yards.

Q. Are you familiar with the yard?

A. Yes; I think I am.

Q. And the trackage and the arrangement of the building and so forth there?

A. Yes, sir.

Q. When are you on duty, night or day?

A. That depends a great deal on the conditions.

Q. In July and August, 1912, when were you?

A. I was on duty all day and some of the time at——

Q Was the day your regular time?

A. My regular time is day work, yes, sir.

Q. From what time in the morning until what time at night?

A. From about seven until six at night.

113 Q. Now, Mr. Watson, do you recall any unusual condition of congestion or accumulation of freight in the Jersey City yard during the months of July and August, 1912?

A. Yes, sir; I do.

Q. What was that condition?

A. The congested condition was brought about——

Q. Now, Mr. Watson, if you will excuse me, please; I am not asking you what brought it about, unless you know of your own

knowledge; if you do, state it; but otherwise tell us, if you will, please, what that condition of congestion was.

A. The condition of work that was brought to the ball ground yard for delivery?

Q. In what way did that congest the situation there?

A. It added to the general work in the ball ground sufficiently to back up the yard stuff; we couldn't get it.

Q. When you say "back up" what do you mean by that?

A. I mean we had to take care of more perishable freight first, which consisted principally of canteloupes and peaches, and the watermelons finally backed up until——

Q. When you use the term "backed up" what do you mean by that; backed up where?

A. I mean that we had more of the highly perishable than we could handle with our watermelons.

Q. And what became of the watermelons?

A. They were put on storage tracks in Harsimus Cove yard and in the Meadows.

Q. Is that what you mean by backing them up?

A. Yes, sir.

Q. You mean they were held back from the delivery tracks?

A. That is exactly what I mean, yes, sir.

Q. How long did that period of congestion last?

A. Well, it began about the 10th of July, and I do not think we were fully over it before the 15th of August.

114 Cross-examination by Mr. Stout:

Q. Do you know Mr. Andrew Spada?

A. Yes, sir.

Q. And do you know Mr. Charles Albrecht?

A. Yes, sir.

Q. Do you know Mr. Collins, who was in the employ of Olivit Brothers during 1912?

A. Yes, sir.

Q. These men were in the yard every day during that period, looking after their watermelons?

A. I believe they were, yes, sir.

Q. And you say that the congestion in the ball ground, or the delivery yard at Second and Henderson Street, was due to the fact that peaches and other commodities billed to pier 29, New York City, were delivered at Second and Henderson Street during this congestion?

A. Yes, sir.

Redirect examination by Mr. Hartpence:

Q. When you speak of commodities, what do you mean by commodities in railroad terms?

A. I didn't—in my direct examination I did not mention commodities; I mentioned cantaloupes and peaches.

Mr. Hartpence: I will ask the Court to strike that out as not responsive to the question.

The Court: That may be stricken out.

Mr. Hartpence (to the stenographer): Now will you repeat the question?

(Question repeated.)

A. Is that the question you want me to answer?

Q. Yes.

A. Well, commodity would mean anything that we had to handle.

115 Recross examination by Mr. Stout:

Q. So the peaches and canteloupes billed to pier 29 being delivered at Second and Henderson Street, brought about this congestion—peaches and canteloupes?

A. That was largely responsible for that condition, yes, sir.

WILLIAM B. PHILLIPS, sworn.

Direct examination by Mr. Hartpence:

Q. What is your business?

A. Freight agent of the Pennsylvania Railroad, at the Second and Henderson Street yards, Jersey City.

Q. How long have you been in that position?

A. Since February the 1st, 1913.

Q. And what was your position there prior to that time.

A. Between the dates of May 1st, 1912, and January the 1st, 1913, I was assistant to the former agent, Mr. E. Butler.

Q. As the assistant to Mr. Butler what were your duties generally?

A. Well, as assistant to him, and looking after the workings of the station and all lines I might say.

Q. Did your duties in any way call upon you to do any work outside of the office?

A. Oh, yes.

Q. In what way?

A. Well, in looking after the deliveries, the placing of cars.

Q. In the yard?

A. In the yard.

Q. And by deliveries you mean what?

A. Supervising the delivery of all kinds of freight.

Q. To whom?

A. From cars to consignees.

Q. Do you recall any unusual conditions in the yard during the months of July and August, 1912?

A. Well, there was a great congestion there during that summer.

Q. Just what time during the summer did that occur?

116 A. Between the first of—well, I might say there was a congestion commencing abut July the 9th and lasting to some date about the middle of August; I would not just like to say what date.

Q. What sort of a congestion was that?
A. Well, we were advised—I say "we"; I was advised——

Mr. Hartpence: I will consent that that portion be stricken out.
The Court: It will be.

Q. What was the nature of the congestion? Just what happened there?
A. There were more cars than we could handle in the yard.
Q. More cars, coming from where?
A. From the south, cars of perishable freight, I might put it that way.
Q. And coming in on the regular freight line from the south?
A. Coming in over our line.
Q. From what direction?
A. Most of the freight comes from the south; in fact all of it, over our line.
Q. Is that the westerly or easterly direction, generally speaking, on your line; freight moving east or west?
A. It would be moving east.
Q. What became of the cars that came in too fast for you to handle?
A. They were simply held up either in the storage yards or in transit.
Q. Storage yards where?
A. Well, there was one storage yard that—they were held up at Harsimus Cove, just outside of our yards; also held up at the Meadows; those are the only two that we had record of.
Q. Do you know the capacity of the Harsimus Cove yard?
A. I do not.

117 Cross-examination by Mr. Stout:

Q. The cause of this congestion was due to the bringing to the Second and Henderson Street yard of peaches and canteloupes which were billed to pier 29?
A. Yes; that is what started the congestion.
Q. The delivery yard at Second and Henderson Street has certain tracks known as the watermelon tracks during the watermelon season, isn't that so? Tracks where you deliver watermelons?
A. Tracks that we deliver watermelons from, yes, sir.
Q. During the period of this strike, or congestion, rather, peaches that were billed to pier 29 were put on those watermelon tracks?
A. They were during the night.
Q. Yes, but you did not always get them out in time to get the watermelons in in the morning, did you?
A. Well, that was impossible to do that.
Q. Yes; sometimes it was ten o'clock in the morning before you got them pulled out of the way?
A. On a few occasions, yes.
Q. And under normal conditions watermelons are put on these tracks ready for delivery about seven o'clock in the morning; isn't that so?
A. Yes.

Q. How are watermelons unloaded, by the consignees or owners of the watermelons, or by the employees of the Pennsylvania Railroad?

A. Handled entirely by the consignees or their representatives.

Q. So that your men have not anything to do with the unloading of watermelons?

A. No, sir.

Q. And where these watermelon tracks are is sort of a market place, is it not, for the watermelons?

A. It is known as a watermelon market.

118 Q. Yes; a watermelon market for, you might say, New York and vicinity, is it not?

A. Yes, sir.

Q. The consignees or owners of the watermelons sell them right there in the yard to retailers, do they not?

A. Usually to speculators.

Q. Well, speculators or retailers; they have an auction there?

A. Yes.

Q. During the period of this congestion what tracks in the Second and Henderson Street yard were used for the delivery of watermelons?

A. We used as many tracks as we were able to between tracks 11 and 20.

Q. In addition to 20 and 15?

A. Between 11 and 20, as many tracks as we could use.

Redirect examination by Mr. Hartpence:

Q. Were the peaches and canteloupes that you referred to in your cross examination brought over from pier 29 to the Jersey City yard?

A. Only on the first night of July the 9th, a number of those cars were on floats alongside of that pier, and they had to be brought back to our yard for delivery.

Q. And after that were peaches and canteloupes brought over from pier 29 for delivery to the Jersey City yard?

A. Not to my knowledge. They were stopped on the way and put in our yard.

Q. What do you mean by being stopped on the way?

A. In transit, or between, so to speak, the tracks of arrival and pier 29.

Q. Do they pass through the Jersey City Yard or the Harsimus Cove yard on the way over to pier 29?

A. Yes, sir.

Q. And how are they taken from the Harsimus Cove yard or Jersey City yard to pier 29, what is the method?

A. They are delivered by floats from Jersey City to pier 29.

119 Q. Carried across the river on floats; and the peaches and canteloupes which you refer to, after those which were brought over from pier 29 on the first night, were simply peaches and canteloupes that were held for delivery in the Jersey City yard instead of being floated over to pier 29, is that right?

A. Some of them were held; others were turned over to us immediately on arrival.

Q. That is what I mean; they were simply stopped; instead of being carried across the river on floats to pier 29, they were stopped at the Jersey City yard and there delivered; is that right?

A. Exactly.

JOSEPH MIFFLIN, sworn.

Direct examination by Mr. Hartpence:

Q. What is your occupation?

A. Freight agent, Pennsylvania Railroad, piers 27, 28 and 29.

Q. Where are piers 27, 28 and 29 located?

A. North River, New York, between Desbrosses and Cortlandt Street.

Q. How long have you been freight agent there?

A. May 16, 1910.

Q. You were in that position then during the months of July and August, were you, of 1912?

A. Yes, sir.

Q. Do you recall in July of 1912 any labor disturbance——

A. Yes.

Q. (continuing)—that took place at piers 27, 28 and 29?

A. Yes, sir.

Q. What was that disturbance?

A. The men had a strike—or the men refused to go to work.

Q. When did that happen?

A. July 9th, at night.

Q. How long did it continue?

120 A. Well, the men refused to come back until the 17th or 18th of July. The effects of the strike were operative until the 22nd of the month.

Q. Were you at piers 27, 28 and 29 during that period, personally?

A. During that period?

Q. Yes.

A. Yes, sir.

Q. Day or night?

A. Both, very largely. Every day and a number of nights.

Q. Did you observe any disorder or violence there at the piers at that time?

A. Not directly at our piers, no.

Q. Did you see any outside?

A. Quite a lot of it on the streets, resulting from the strike.

Q. Well, on the part of whom was that disorder or violence?

A. On the part of whom was the disorder?

Q. Yes.

A. Well, it was always deemed, if not proven, that it was the people who objected to the men working, that were assaulting the men who were taking the jobs; in many cases on the part of former employees.

Mr. Stout: I object to that as not competent. He cannot testify to assumptions.

The Court: The assumption part may go out. The fact that he actually knows about may stand of course. I do not know just what part that is. You will have to make that clear.

Q. To what extent, if any, do you know that it was on the part of the men who were interfering with your men?

A. What is that?

(Question repeated.)

A. Well, I possibly could not say that I positively know. The rumors were general; we had one or two cases where men were brought back after starting for home, that were assaulted on the way home.

121 Q. Your men?

Mr. Stout: I again object to testifying to rumors.

The Court: The rumor goes out, but the fact that one or two men had started for their homes and were brought back, who had been assaulted in the streets, I will let stand.

Mr. Stout: But the testimony, I believe, that that was from rumor also.

The Court: You saw the men who were brought back?

The Witness: Yes, sir. In one or two cases we had to summon the ambulance to take them to the hospital.

Mr. Stout: You saw them?

The Witness: Saw the men and knew they were assaulted and knew that the ambulance was summoned.

Mr. Stout: All right.

Q. How many men ordinarily were employed on piers 27, 28 and 29 under your charge?

A. You mean on the market operation?

Q. How many men would you ordinarily have on those piers?

A. At night we would have practically four hundred; in our day operation we would have two hundred and fifty to three hundred, at that season of the year.

Cross-examination by Mr. Stout:

Q. These men who left your employ either on July 9th or July 10th, 1912, were longshoremen, were they not?

A. Freight laborers.

Q. And they were employed by the Pennsylvania Railroad Company to unload freight at these piers?

A. Yes, sir.

Q. And peaches and canteloupes were delivered at pier 29?

A. Peaches and canteloupes, yes, sir.

122 Q. At pier 29?

A. My hearing is a little bad. It will be better if you speak a little louder.

Q. Watermelons were delivered at pier 29 during the year 1912?

A. No, sir; except very occasionally there would be some in packages.
Q. I mean carload lots?
A. No, sir.
Q. And had not been for how many years previous to 1912?
A. Not at any time since I have been agent there.
Q. How long have you been agent there?
A. May 16, 1910.
Q. These men who walked out, had they made any demand on the Pennsylvania Railroad Company, if you know, for higher wages?
A. They had not.
Q. Do you know the cause of their leaving?
A. Sympathetic strike in conjunction with a strike that started on the steamboats.
Q. How do you know that there was a strike with the steamboats?

Mr. Hartpence: I object on the ground that this witness has testified on cross examination as to the causes of the strike being a sympathetic strike. It seems to me that this question now leads to a refutation of the testimony brought out by Mr. Stout by his own question.
The Court: No; he simply asks him the reason: "How do you know there was a sympathetic strike?"
Mr. Hartpence: I withdraw my objection.

Q. How do you know that there was a strike among the employees of the ship men; do you know it of your own knowledge?
A. I could easily answer, how could I escape knowing it? You could not be in New York in the freight business and not know it.
123 Q. Just answer my questions. Do you know of your own knowledge that there was a strike among the employees of the ship men?
A. Yes, sir.
Q. You do?
A. Yes, sir.
Q. From what source did you get that knowledge?
A. Well, I got it from associating with the agents and got it from almost hourly inquiry of the various stations as to what shape they were in.
Q. You were making inquiry in reference to it?
A. Making inquiry almost hourly to know what men I had and what steps to take to get them, and when the old men returned, and all that.
Q. Did these men come back into the employ of the Pennsylvania Railroad Company without increase in wages?

Mr. Hartpence: Objected to as immaterial and irrelevant.
The Court: What is the relevancy of that?
Mr. Stout: I want to show that this was just a mere walkout and not a strike as I understand a strike. A walkout, as I understand it, is where a body of men leave the employ of their employer with-

out making any demands, or on the ground of any decrease in salary, or anything of that kind, just merely walk out. That is a walkout; but a strike has the further element that they have demanded something or have some grievance which they have expressed against the employer.

The Court: All right; I will let you ask this question. If you want to prove it actually was a strike, go ahead and ask your question.

(Question repeated.)

124 A. There was no increase made at the time they returned.
Q. That's all.

The Court: Now where do we get on that? That simply may mean one of two things; it may mean that they made a demand and that it was not granted, or it may be that they went out whimsically, without any reason on earth, and that they walked back in the same way. That does not get us anywhere. It does not prove anything.

Mr. Stout: I will ask a few further questions.

Q. Do you know whether any demand was made upon the Pennsylvania Railroad Company for increase of salary prior to their walking out?

A. I am very credibly informed that there was not, and I know that there was none made through me.

Q. Did they before they left your employ, or afterwards, assert that they had any grievance against the Pennsylvania Railroad Company?

A. I will answer one at a time. Not before they left our employ.

Q. Did they afterwards?

A. Well, we had a number of negotiations with them and they made all manner of excuses for having gone out and made several different demands before they would come back.

Q. That's all.

A. But, by the way, their coming back was not influenced at all by any demand they made.

Redirect examination by Mr. Hartpence:

Q. When you state that the effects of the unusual conditions there at the pier lasted until the 22nd of the month, you mean the effects on your piers; is that correct?

A. Yes, sir.

125 GEORGE F. SPENCER, sworn.

Direct examination by Mr. Hartpence:

Q. What is your business?

A. Inspector of Police, Pennsylvania Railroad Company.

Q. How long have you been employed in that capacity?

A. Eleven years.

Q. What are your duties as inspector?

A. I have charge of the police work on the piers, and around the New York territory and Jersey City.

Q. During the months of July and August, 1912, did you do any work on piers 27, 28 and 29, in New York?

A. Yes, sir.

Q. Anywhere else during that time?

A. Jersey City.

Q. What part of Jersey City?

A. Harsimus Cove.

Q. Anywhere else?

A. Greenville.

Q. Anywhere else?

A. Harlem River and Brooklyn.

Q. Where is Harlem River?

A. 125th Street.

Q. Did you go westerly as far as the meadows?

A. No, sir; my territory only extends to Waldo Avenue yards?

Q. And Waldo Avenue yards are located where?

A. Just the other side of the trestle, Newark Avenue.

Q. How near is that to the Harsimus Cove yard?

A. It joins it—it is in the Harsimus Cove district; the two divisions separate right near Waldo Avenue yard.

Q. About how far back from the river?

A. From which river?

Q. From the Hudson River?

A. From the Hudson River I should say about half a mile or three quarters of a mile.

Q. During those months, July and August, Mr. Spencer,
126 what work did you do at piers 27, 28 and 29?

A. Why, on the 8th of July I was notified that there was labor trouble along the river front.

Q. By whom were you notified?

A. By one of the men who has charge of that territory under me, and I immediately investigated myself, and on the 9th I stationed men around the different piers, pier 1, 4 and 5.

Q. Are they Pennsylvania piers also?

A. Yes, sir; and 27, 28 and 29 and 37th Street. I stayed myself at 27, 28 and 29 from the 9th of July until the 21st of July.

Q. Were there any unusual conditions there at those piers between the 9th and the 21st?

A. Yes; the laborers had all gone out on strike.

Q. Which laborers?

A. Men employed on pier 28—27, 28 and 29.

Q. Pennsylvania Railroad piers?

A. Yes, sir.

Q. What unusual conditions did you notice there yourself?

A. There was disorder there continually, to such an extent that on the 10th of the month I had about fifteen men with me. I had to send and have men brought from the other divisions, from Pittsburg, Harrisburg, Altoona, Trenton, Philadelphia and Atlantic City. I had about fifty men then altogether with me.

Q. What kind of men?

A. Police officers.

Q. In the department's service?

A. Yes, sir.

Q. What did you do with them?

A. I distributed them around the different piers, in the front of the piers. It grew to such an extent that the superintendent instructed me to take their places, and I communicated with different labor employment bureaus and had men put there, and if they would go out to eat or anything they would be assaulted on the street.

Q. Assaulted by whom?

A. By some of our own men and different other steamship piers along the river front.

127 Q. Where were these men congregated, when you speak of the disorder you saw?

A. They congregated in front of the piers.

Q. What piers?

A. 28 and 29, and 1, 4 and 5; and they had headquarters on West Street between Beach and North Moore; and I went to that headquarters one night and heard the chief speakers speak. I went in there. I was supposed to be one of the strikers, and I heard them tell the men to stay out.

Q. Did you know any of the men that were there that night?

A. Yes; there was some of our own men and men from other piers along the river front.

Q. Were those men at that time out on strike?

A. Yes, sir.

Q. What, if any, occurrences of violence did you see yourself on the piers?

A. I saw Mr. Schell there too, stabbed in the jaw, and he ran down, I think it was through Laight Street. The crowd attacked him.

Q. What was his position at that time?

A. He was foreman in one of the yards; he was brought over there to assist on the piers, because they did not have men enough there to work to relieve the condition.

Q. Piers 27, 28 and 29?

A. Yes, sir.

Q. Who assaulted him, do you know?

A. There was a crowd stood on West Street, some of the men I had previously seen in the strike headquarters; and another night we had sent over—the men could not go out to get anything to eat, and they would assault them; and we sent to a restaurant, Bradley's on West Street near Desbrosses, and I used to send three of my men over, and as a rule three city officers; I had to go to the Police Commissioner and have men detailed there, and to Inspector Daly, who was in charge of that inspection district. This officer here,

128 Inspector Quinn, who was connected with the city police department on the night in question, they threw bottles at our men who went over to get sandwiches and coffee. One of them, Frank Belvurdo, I think, was the man arrested for striking the man who took the place of one of the strikers, he struck the man on

the head with a bottle. He was arrested by Officer Quinn and fined by Magistrate Cottrell ten dollars in the night court.

Q. During that time, between July 9th and 21st, did you see disturbances at any other points along the water front than at piers 27, 28 and 29?

A. Yes; I visited all along the piers there, at all the piers, the Clyde Line, the Morgan Line, Savannah Line, all the piers along there.

Q. Did you visit there?

A. Yes, sir; I went to see what the conditions were there. They were the same as our own.

The Court: Did you ascertain what the cause of the strike was?

A. So far as I could find, Your Honor, there was—I think it was the Morgan Line went out first, and then they sent up representatives and influenced our men.

JOHN J. QUINN, sworn.

Direct examination by Mr. Hartpence:

Q. What is your occupation, Mr. Quinn?

A. A police officer of the City of New York and Borough of Manhattan.

Q. How long have you been an officer there?

A. About eight years.

Q. What is your particular position?

129 A. I am acting detective sergeant in the City of New York, Borough of Manhattan.

Q. What was your particular position in July and August of 1912?

A. A patrolman.

Q. Where were you stationed?

A. West Street, from Canal as far as Laight, in the Borough of Manhattan.

Q. Does that cover the territory in which the piers 27, 28 and 29 of the Pennsylvania Railroad are located?

A. Yes, sir.

Q. Any other piers of the Pennsylvania along there?

A. No, sir.

Q. In your territory at that time?

A. No, sir.

Q. Any other piers of any kind along in your territory?

A. Yes, sir.

Q. What others were there?

A. There was the People's Line, pier 32, foot of Canal Street; pier 31, New York Central; Desbrosses Street ferry; the Day Line at the foot of Desbrosses Street; and pier 29, foot of Laight Street, or at least Vestry Street; pier 28, foot of Laight Street, and pier 27, at foot of Hubert Street.

Q. Officer, did you notice or see any unusual conditions during the month of July, 1912, along the water front?

A. Yes, sir.

Q. What did you see?

A. There was a strike in pier 27, 28 and 29 about 7 A. M. in the

morning. I was on post there when I saw a number of men, about five hundred men employed by the Pennsylvania Railroad Company. I went up to some of them and asked them what was the trouble, and they told me they were out on strike.

Q. Where were they at that time?

A. On the sidewalk and in the middle of the street, on West Street. Now West Street is very wide; we call one part of West Street the farm.

Q. What part is that?

A. That is the part west of the car tracks, to the bulkhead.

130 Q. Toward the river?

A. Towards the river.

Q. Well, what happened?

A. Well, about seven thirty in the morning I saw Mr. Mifflin and Mr. Christie standing among five hundred men, and I was right alongside of Mr. Mifflin when I heard him say, "Why don't you go to work, and I will see the people higher up, if there is any trouble, and we will settle this trouble." And the men said, "No, sir, we will not."

Q. Who was Mr. Christie?

A. The gentleman on the stand a minute ago.

Q. Mr. Christie?

A. Mr. Mifflin. Mr. Christie is the superintendent, I think, of the railroad.

Q. Had you ever see him on the piers before?

A. I seen him going up and down, when I was on post there. I know his name.

Q. After that did you see any other disorder?

A. We were ordered down there.

Q. By whom?

A. By the police captain. He had extra men along the river front there, and once in a while we had to make an arrest. I made three arrests down there during the strike.

Q. For what?

A. Well, there was about half a dozen non-union men was carrying some food, sandwiches, from Bradley's restaurant right at the corner of Desbrosses and West, and this Italian that I locked up threw a bottle. I locked him up and he was fined ten dollars by Magistrate Cottrell, night court.

Q. Those non-union men you refer to, where were they working at that time?

A. Pennsylvania Railroad.

Q. On the piers?

A. Inside, yes, sir.

Q. 27, 28 and 29?

(No answer.)

Q. Who else did you arrest?

A. I arrested two more Italians at the corner of Watt and West Street for assaulting a man on his way home.

Q. What kind of a man was he?

131 A. Well, he was working on the pier. He came out and was on his way home, when they attacked him, corner of West and Watt.

Q. These men who attacked him, do you know who they were, where they came from?

A. They were men—I found out afterward off one of them, that he was employed there and was out on strike.

Q. Had been employed there?

A. Had been there.

Q. Did you arrest anybody else?

A. No, sir; only the three men. There was other men arrested by other officers.

Q. Did you see any other men arrested by any other officers?

A. Yes; Officer Kane ordered some men off the corner of Desbrosses and West Street and he placed them under arrest when they refused to move.

Q. At what precinct were you stationed?

A. The eighth precinct at that time.

Q. Do they keep a record of the arrests and the cause of arrest?

A. Yes, sir.

Q. Have you a record that was kept there at that time?

A. Yes, sir.

Q. What do you call that?

A. A police blotter; day and arrest blotter.

Q. And that record is kept, is it, of all arrests, and shows the cause of arrest?

A. Yes; the cause of arrest.

Q. Just turn to the record of the arrests at that time you speak of, during the strike, and state what arrests it shows were made of men engaged in it.

A. Here is one arrest here on July 10, 1912; disorderly conduct; Lucio Nuzio, 58 Sullivan Street; 34; white; Italy; laborer; married; arrested by myself, Quinn, John J., 2820, my shield number then.

Q. Is that one of the men you referred to?

A. One of the man I refer to. Another man here was ar-
132 rested July 10, 1912, at 12.05 P. M., disorderly conduct; Tona Rosso, 18 Marcy Avenue, Brooklyn; 27; white; Italy; laborer; married; arrested by same officer, John J. Quinn, 2820.

Q. Is that another one of the men you arrested?

A. Yes, sir; arrested corner Watt and West Street, interfering with pedestrians, annoying and striking them as they were going to work; prisoners on strike; also used loud and boisterous language. Fined five dollars by Magistrate Cottrell in the tenth district court; that is the night court.

Q. How many others do you find there? Without enumerating them.

A. Another one here on July 12, 1912, at 8.45 P. M.; disorderly conduct, Frank Beforke, 58 Sullivan Street; 23; white; Italy; laborer; single; arrested by same officer, John J. Quinn.

Q. Is that one of the men you refer to?

A. Yes, sir. Arrested at West and Desbrosses Street and charged by the officer with throwing a glass bottle at a number of workmen on the farm in front of pier 29. There was no persons injured. Fined ten dollars by Magistrate Cottrell, night court.

Q. Do you find any other record of any other arrest made by

other officers growing out of the strike, and if so how many? Without reading them all through, how many do you find?

A. Officer Kane is one.

Q. Did you say you found one by Officer Kane?

A. Officer Kane; and there was about half a dozen more, all in that vicinity; I don't know if they were on account of the strike or not.

Q. The one by Officer Kane is the one you spoke about in your testimony?

A. Yes, sir.

Cross-examination by Mr. Stout:

Q. Officer, you say that some of these men had been in the employ of the Pennsylvania Railroad Company?

A. Yes, sir.

133 Q. How did you know that?

A. They told me themselves when I arrested them, in the night court. I asked them what was the trouble; they said, "We are out for more money." I asked them how long they had worked there, and one of them told me he had worked there a year.

Mr. Stout: I move to strike out the testimony of this witness as to what these men said with reference to their employment.

The Court: I will strike that out.

Q. And that is the only source of your knowledge as to who had employed these men previous to the strike, what they told you?

A. That's all.

Recess.

JOSEPH MIFFLIN, recalled.

Direct examination by Mr. Hartpence:

Q. Mr. Mifflin, where was the peach market in New York, if you know—peaches that come in over the Pennsylvania railroad to pier 29, where was the peach market?

A. It is commonly called pier 29, but the actual location is on the bulkhead on pier- 29 and 28, all under the one covering, the one station.

Q. Is that out in the street?

A. No; it is under the covered bulkhead, the bulkhead shed.

Q. The covered bulkhead?

A. Yes, sir.

Q. Was that peach market continued during the strike that you have referred to over there; was that kept up as the peach market during that time?

A. The privileges were allowed the public, but we could not get any peaches there.

Q. Why not?

134 A. On account of the labor, we could not handle them there; could not handle them with the kind of labor and the quantity of labor that we could get.

Q. What did you do then when you found that you could not handle them at pier 29?

A. Well, locally, as an agent, I merely notified our superintendent, and then it did not devolve upon me to take steps for the divergence and so on; that fell on others to inform the receivers they could not get labor, and they were allowed the privilege of divergence to Jersey City.

Q. That was because you could not handle them there at the pier, is that right?

A. We notified them that we could not get help over there, could not get help enough, and they took advantage of it and had it diverted to Jersey City.

(No cross examination.)

W. F. TOMLINSON, sworn.

Direct examination by Mr. Hartpence:

Q. What is your business?

A. I am freight trainmaster of the New York Division, Pennsylvania Railroad.

Q. How long have you occupied that position?

A. About eight years.

Q. Where are you located?

A. Jersey City.

Q. As freight trainmaster of the New York Division what are your duties, generally?

A. To look after the freight movement between Philadelphia and Jersey City.

Q. Both ways?

A. Yes, sir.

Q. After a freight movement reaches Jersey City, running east, consigned through to New York, in what manner is that disposed of?

A. It is disposed of by another division.

135 Q. Who is the trainmaster of the Manhattan Division?

A. Mr. A. B. Plant.

Q. You have nothing to do with the transporting of it then across the Hudson River to pier 29?

A. Nothing, no, sir.

Q. Are you familiar with the Harsimus Cove yard and the freight yard at Jersey City, at Second and Henderson Street?

A. I was very familiar with it when I had charge of it, but for the last four or five years I am not familiar with the changes that have been made in it.

Q. How long were you in charge of that yard?

A. As trainmaster some three years, and as assistant trainmaster about twelve.

Q. At what time? When was that?

A. Assistant trainmaster from about 1895 to 1907, and from about 1907 to 1910 as trainmaster.

Q. Do you know whether there were any material changes between 1910 and 1912?

A. I do not think there is. I have been through Harsimus Cove since and I have not noticed any material changes.

Q. Are you familiar with the line west out as far as Meadows?

A. Yes, sir.

Q. I show you a blueprint, which it is admitted by counsel represents the Harsimus Cove yard and the Henderson Street yard and their tracks west as far as Meadows——

Mr. Stout: Yes.

Mr. Hartpence: I will ask that it be marked as D-1.

Q. I ask you if that map is familiar to you or if you can read it?

A. I can recognize it as a map of Harsimus Cove yard.

Q. Will you indicate on this map just where the Harsimus Cove yard is located?

A. The delivery yard, you mean?

136 Q. The Harsimus Cove yard itself, the storage tracks.

A. This (indicating) is where the trains enter the yard and run over the elevated structure to this point at Henderson street, and each line here indicates tracks; these are the float bridges, 5, 6 and 7.

Q. Is that where the cars are put on floats to be taken across the river?

A. Either there or at these bridges three and four. The yard takes in all of this—storage tracks.

Q. Where is the freight yard proper, the Second and Henderson Street yard?

A. There (indicating).

Q. At that point?

A. Yes, sir.

Mr. Hartpence: Indicated by two X's.

Q. The Harsimus yard is indicated by H. H.; is that correct?

A. Yes, sir.

Q. Now run-ing west how far is it from the Harsimus Cove yard to the Meadows?

A. I cannot say exactly, but about five miles, from the water front to the Meadows yard.

Q. Will you show just how the tracks run out to Meadows?

A. Leaving Harsimus Cove and going to the Meadows you would follow out here over the elevation to about Waldo Avenue, when you strike the ground and follow on out here beyond Marion—this is the connection with the Erie Railroad; go on out here and enter the meadows yard here (indicating).

Q. Will you show where the meadows yard extends?

A. From here to here (indicating).

Q. Just east of Manhattan Transfer?

A. Yes, sir.

Q. This is marked "M."

A. The meadows yard extends from here where all eastward trains enter, to this point where you pull out of the yard and route east.

The westward trains pull in the yard here, and the classifica-
137 tion is done between these two yards and they pull out over here.

Q. Now running from Meadows to Harsimus, how many tracks are there?

A. Two freight tracks.

Q. One each way?

A. Yes, sir.

Q. One east and one west?

A. Yes, sir.

Q. Now, Mr. Tomlinson, do you know the storage capacity of the Harsimus Cove yard, how many freight cars can be placed there and kept there?

A. I do not, sir.

Q. Can you state the storage capacity of the Meadows yard, if you know?

A. We can get in the Meadows yard approximately two thousand cars, but you could scarcely operate the yard if you had that many cars in it. Every track would be filled up.

(No cross examination.)

LEVI M. HILDUN, sworn.

Direct examination by Mr. Hartpence:

Q. What is your occupation?

A. I am the agent of the Ocean Steamship Company of Savannah, of New York.

Q. Where are you located?

A. Pier 35, North River, New York.

Q. How long have you been in that position?

A. Not quite twelve years.

Q. Were you on duty during the months of July and August, 1912?

A. Yes, sir.

Q. Have you any recollection or knowledge of any unusual labor condition at that time at your pier?

A. Yes, sir, there was a strike at that time, in the early part of July.

Q. What time in July?

138 Mr. Stout: I cannot see the materiality of this line of testimony, a striks as I understand it among the employees of the Savannah Steamship Line. It seems to me the strike involved in this suit would be the strike among the employees of the Pennsylvania line.

(Objection overruled.)

A. I do not know how to answer that question exactly.

Q. When did it begin, so far as you know?

A. Well, the strike began before my knowledge, with firemen and seamen on the ships; I do not when that commenced.

Q. When did it commence——

A. But the strike of the longshoremen was commenced on the morning of the first day of July.

Q. And where did it commence on the first of July, with your observation of it?

A. It commenced on our pier.

Q. How long did it continue after that?

A. With our men it continued until the—part of them came back on the Fourth of July, and practically all of them came back on the fifth of July following.

Q. Did you observe the strike anywhere else except at your pier.

A. On the same day, on the afternoon of the first of July, as I recollect, the men on the Clyde and Mallory lines, next door, the next two piers adjacent to us, they stayed out, and perhaps a week later the Morgan Line men struck. Following that there were strikes all along the river front. I do not know of my own recollection now just where they were.

Q. Can you state from your recollection about when they ended?

A. Along in the latter part of July.

Q. Did you have any negotiations with the men during that time?

A. Yes, sir, constantly.

139 Q. To what extent?

A. I was trying to make some arrangement with them to try to get them back all of the time they were out.

Q. Did they have a spokesman?

A. They had men—a sort of committee.

Q. Did you interview them?

A. Yes, sir.

Q. Who was the ringleader of that, do you know?

A. I could not say; there wasn't any ringleader amongst our men. There were several ringleaders.

Q. Who were they so far as you saw?

A. I could not name them; I did not know their names.

Q. Can you identify them in any other way besides by name?

A. I could identify them if I were to see them. I know them by sight and number, not by names.

Q. Have you any way of designating them now?

A. No, I have not.

Q. By nationality or otherwise?

A. Yes; there were two or three Poles and two or three Jews and a couple of Irishmen. They sort of made up their committee in that way, each nationality had one or two spokesmen.

By the Court:

Q. These men, did not come from your work, did they?

A. Yes, sir.

Q. These ringleaders you are talking about?

A. Yes, sir.

Q. They all did?

A. That is the only ones I know anything about. I did not have any dealings with any others. That is what he asked me.

By Mr. Hartpence:

Q. Do you know who the real agitator of the strike was?

A. Why, the strike started with, as I said first, with the firemen and seamen on the ships. The man who was leader at that
140 time was named Videll—James Videll.

Q. What nationality, do you know?

A. He was a Spaniard, I believe.

Q. What did you observe about his actions in respect to the strike?

A. I did not see anything of him, except by hearsay, reading the newspapers.

Q. During the time that you say the strike continued to your knowledge did you have occasion or did you go up and down West Street?

A. Every day, yes, sir.

Q. At other points besides your own piers?

A. Every day, yes, sir. I go from the Pavonia Ferry, from Chambers Street ferry back and forth every day.

Q. Did that take you down town also?

A. Yes, sir, that is down town.

Q. How far?

A. That is about a mile down town.

Q. Did you observe any occurrences of disorder or violence among these men on those occasions?

A. I did not.

Q. You did not yourself?

A. There were strikes all along there, men standing out there, I did not see any disturbance.

Q. In small number- or large?

A. Oh, a great many of them.

(No cross examination.)

EDWARD A. KELLEY, sworn.

Direct examination by Mr. Hartpence:

Q. What is your occupation?

A. I am the agent of the Clyde and Mallory Steamship Companies.

Q. Located where?

A. Pier 45 North River.

Q. New York?

A. New York.

141 Q. How near is that to pier 29, the Pennsylvania Railroad pier?

A. About a mile and a half.

Q. You know where pier 29 is, do you?

A. Yes, sir.

Q. How long have you been employed with the Clyde Line?

A. About twenty years with the Clyde Line.

Q. What was your position in July of 1912?

A. Agent.
Q. The same as your position now?
A. Yes, sir.
Q. What were your duties, generally, as agent?
A. Why, in charge of the loading and discharging of the steamers and the delivery and receiving of freight and other terminal operations.
Q. Did you have many men with you on the pier?
A. About six or seven hundred.
Q. Longshoremen?
A. Longshoremen and foremen.
Q. Did you have any trouble with them during the month of July, 1912?
A. Yes; there was a strike.
Q. Among your men?
A. Yes.
Q. Anywhere else, to your knowledge?
A. At the Southern Pacific, during perhaps the second week of July; it commenced with them, and the Savannah Line the first part of July.
Q. Where did it originate, do you know?
A. Well, so far as the coastwise lines are concerned it first broke out at the Savannah Line, so far as I know.
Q. So far as your best knowledge of it?
A. My best knowledge of it, the morning of July 1st.
Q. Did it extend any farther to your knowledge than you have already stated?
A. Yes; it extended generally along the water front.
Q. All the longshoremen involved in it?
A. Yes, sir.
142 Q. What did you see about it from time to time while it continued?
A. What did I see about it?
Q. Yes, that indicated to your mind that there was a strike?
A. Well, the men refused to work and they interfered with other men whom we hired in their places.
Q. Did you see any disorder along West Street?
A. Occasionally, yes.
Q. To what extent did you traverse West Street while that continued?
A. Well, I had to go up and down West Street for about a mile and a half several times a day. Our piers run from 36 to 45, that is 36, 37, 38 and 45, which is quite a distance, and I had to cover that distance.
Q. How long did that trouble last?
A. It lasted with us during the entire month of July.
Q. How long did it last as far as you observed along the water front further down?
A. That was about the extent of it.
Q. Did you see any occurrences of violence during that time?
A. Yes; I stated I did.

Q. What sort of occurrences were they?
A. Why, assaults on certain men; I do not know who they were.
Q. Do you know whether those men were working or not along the waterfront?
A. Do I know if they were workmen? I assume that—some of them were workmen and some perhaps were delegates of the men.

By the Court:

Q. Were the men in your employ at that time, Mr. Kelly, unionized?
A. No; they were not.
Q. Was there an effort to unionize them at that time?
A. That was the idea.
Q. That was the idea, was it?
A. That was the idea.

(No cross examination.)

143 THOMAS A. CAVANAGH, sworn.

Direct examination by Mr. Hartpence:

Q. What is your business?
A. Chief Clerk, Baltimore & Ohio Railroad, pier 22 North River, New York.
Q. How long have you been there?
A. June 5th, 1913.
Q. Where were you before that?
A Chief Clerk, 26th Street station, same company.
Q. How long have you worked for the company?
A. Nine years.
Q. Where were you located in July and August of 1912?
A. 26th Street station.
Q. 26th Street?
A. North River.
Q What pier is that, do you know?
A. Well, there is no pier there. There is a freight station; it is about 65—between 65 and 67.
Q. What were your duties during July and August, 1912, generally, as Chief Clerk?
A. Supervision.
Q. Supervision of what?
A. Clerical force.
Q. Did you have anything to do with the laboring men employed there?
A No, sir.
Q. Where you were you could see them, observe them?
A. Yes, sir.
Q. How many did you have there, approximately?
A. At 26th Street we only had about a dozen.
Q. Did you have any trouble with them during July and August, 1912?

A. Not at 26; at pier 22.
Q. Where is that located?
A. At the foot of Jay Street.
Q. Is that south of pier 29?
A. Yes, sir.
Q. Do you know where pier 29 is, the Pennsylvania Railroad pier?
A. Yes, sir.
Q. What trouble was there that you saw down at pier 22?
144 A. Well, all the laboring men went out on strike.
Q. How long were they out, do you know?
A. They say they were out about a fortnight.
Q. What say?
A. They say they were out about a fortnight.
Q. When did they go out?
A. About the first of July.
Q. What was the cause of the strike, do you know?
A. Well, they wanted more money.
Q. Do you know where it originated—I will withdraw that question—do you know whether it extended any farther than your line?
A. Oh, yes; it went to the Savannah, Mallory, Clyde, Pennsylvania; I am not sure about the Erie or the Lehigh Valley.
Q. Who were out on strike, what class of men?
A. Laborers only.
Q. Longshoremen?
A. Longshoremen.
Q. Do you know what the cause of the strike was, generally?
A Well, they were agitating for more money.
Q. Do you know where it originated?
A. Savannah Line, I believe.
Q. Did you have occasion to go up and down the waterfront during the time you saw it there?
A. Yes.
Q. How long did it continue generally along the waterfront?
A. From the beginning of July toward the end of the same month.
Q. They were still out in some places, were they, when your men went back?
A. They were out on some piers, and then back in others.
Q. After they had gone back on your pier, 22, some others were still out?
A. Yes, sir.
Q. What did you see as you went up and down West Street waterfront to indicate that there was a strike?
A. Well the strikers were out and assembled around and
145 now and then the throwing of missiles, and the police tried to stop that.
Q. Did you see anybody struck by the things thrown?
A. I saw some, but I did not wait to see the finish of it.
Q. What did you do?
A. I went on about my business.

The Court: You did what they call "beating it," I suppose?
The Witness: Yes, sir.

Cross-examination by Mr. Stout:

Q. You say that some of the employees of the Pennsylvania Railroad Company were on this strike?
A. Yes, sir.
Q. How did you know they were employees of the Pennsylvania Railroad Company?
A. They were all outside of pier 29 and we were inquiring as to what roads were out at the time. We were trying to find out what roads were in it besides the Baltimore and Ohio.
Q. Can you designate any particular men who were in the employ of the Pennsylvania that were on this strike?
A. No, sir.
Q. From whom did you make your inquiry?
A. Well, it was generally known at that time. I could not name any certain man.

Mr. Stout: I think that this witness is not competent to testify as to the employees of the Pennsylvania Railroad Company participating in this strike.
The Court: Well, I think that is probably true with respect to this witness. I will strike it out.

146 CORTLANDT N. GAVITTE, sworn.

Direct examination by Mr. Hartpence.

Q. What is your occupation?
A. Freight agent of the New England Steamship Company, piers 14 and 15 North River.
Q. How long have you been in the employ of the company?
A. Twenty years.
Q. How long have you been the freight agent at those piers?
A. Oh, pardon me; I have been in the employ of the company thirty-nine years; I have been freight agent twenty years.
Q. At piers 14 and 15.
A. At piers 18 and 19, and 14 and 15.
Q. Where were you in July and August, 1912?
A. At piers 18 and 19 North River.
Q. As freight agent what were your duties generally?
A. Well, the duties of freight agent are to superintend the receiving and delivery of freight and the direction of the piers.
Q. Did you have any men working for you there on those piers?
A. Yes.
Q. How many?
A. Three hundred.
Q. Did you have any trouble with them during July and August, of 1912?
A. We had a strike in July, 1912.
Q. A strike of your men?

A. Yes, sir.
Q. When did they go out?
A. July the 5th, I think.
Q. Do you know how long they were out?
A. Two weeks.
Q. Do you know whether or not there was a strike anywhere else than at your piers at that time?
A. Yes.
Q. What do you know about it; how far did it extend to your knowledge?
A. At that time there was a strike pretty generally along the North River, the coastwise lines, some of the rail lines, and ourselves.
147 Q. Who were striking?
A. The longshoremen.
Q. Do you know why they struck?
A. Why, primarily I presume for an increase in wages.
Q. Well, anything else?
A. Why, not that I know of.
Q. How long did your men stay out?
A. Two weeks.
Q. And did the strike continue anywhere else after that, to your knowledge?
A. I do not recall; I think that we were the last.
Q. During that time did you have occasion to go up and down West Street, the river front?
A. Yes.
Q. How far?
A. Well, somewhere between the Battery and Fourteenth Street.
Q. What piers are located at 14th Street, the foot of 14th Street?
A. I do not know; I could not answer.
Q. Did you have occasion to go up by the Pennsylvania Railroad piers, 27, 28 and 29?
A. Yes.
Q. Are they located north or south of your piers?
A. 27, 28 and 29 are north of our piers.
Q. Are they south of 14th Street?
A. Yes, sir.
Q. Well, as you went up and down the water-front during that time, what did you see that indicated there was a strike?
A. The presence of men congregated in front of the various piers, that to my mind indicated trouble or the presence of a strike.
Q. Any loud noise or any violent actions or anything of that sort?
A. No, no unusual noise, and no particularly violent actions that I remember.
Q. Any demonstrations of any kind, any speechmaking or anything of that sort?
A. Oh, yes; they were all talking.
Q. What were they talking about?
A. They all had——
Q. What were they talking about, do you know?
A. I do not.

148 Q. Did you interview any of them personally?
A. No.
Q. At your piers, did you?
A. No.
Q. You did not carry on negotiations with the strikers yourself?
A. In a measure. The negotiations were under the direction of the General Manager.

(No cross-examination.)

MALCOLM TOWNSEND, sworn.

Direct examination by Mr. Hartpence:

Q. What is your occupation?
A. Freight agent, Pennsylvania Railroad, pier 4 and 5, North River.
Q. How long have you been there in that capacity?
A. Five years.
Q. Were you on duty in July and August, 1912?
A. I was.
Q. Did you have any trouble there with your men?
A. We did.
Q. What sort of trouble was it?
A. A committee—may I first——
Q. Answer the question, if you please.
A. The committee waited upon me and stated that they wanted twenty-three cents an hour.
Q. A committee of whom?
A. The committee of the labor.
Q. From which pier?
A. From our pier. The wages then were 19.1. I told them I would have to communicate with the superintendent, and they gave me to the next morning, and if I did not have an affirmative answer the men would go out. They reported the next morning; I had no reply; I could not alter the wage, and they went out.
Q. How long did they stay out?
A. Until—that was the 11th of July, and they stayed out till the 16th.
149 Q. How many men did you have on your pier?
A. About one hundred and forty.
Q. During that time that they were out, to your knowledge was there a strike anywhere else there along the river front?
A. Yes, sir. I was not a witness, but as Secretary of the Local Freight Agents' Association I personally interviewed every freight agent from the Clyde Line down to our pier and made a report of that as Secretary of the Local Freight Agents' Association to the Association, and the resolution was to the effect it should not be entered on the minutes but it should be part of the secretary's records for any member of the association to examine or make a copy of it.
Q. As a result of your investigation did you find that there was a strike anywhere else except at your pier?

A. Yes, sir, from the Clyde Line down, including pier 2.
Q. How far up is the Clyde Line?
A. Thirty-two piers.
Q. Is that north of the Pennsylvania piers, 27, 28 and 29?
A. Yes.
Q. Do you know where it originated?
A. Yes; the Savannah Line, July 1st.
Q. Did you see anything in the way of violent occurrences or demonstrations during that time?
A. Only opposite the stations I have charge of, because I was at our station from the time it started until its finish, from six o'clock in the morning until eight or nine at night, and I saw former employees, one particularly I remember, who was an employee of pier 28 when I was agent at that point, shaking his fist toward our pier, toward some of the men who were working on the bulkhead, but we had the section in there so well policed, the police compelled these people to keep moving, and the result of it was there
150 was no demonstration. It was reported to be going on upon the side streets, but I did not see it.
Q. You were once agent at pier 28?
A. Twenty-five years, yes, sir.
Q. Down to what time?
A. 1910.
Q. You were succeeded by Mr. Mifflin?
A. I was.

Cross-examination by Mr. Stout:

Q. When was this demand made for the increase in wages by this committee?
A. July 1st.
Q. July 1st?
A. July 11th.
Q. July 11th?
A. Yes, sir.

ABRAM B. PLANT, sworn.

Direct examination by Mr. Hartpence:

Q. What is your business?
A. Freight trainmaster, Manhattan Division, Jersey City.
Q. Pennsylvania Railroad?
A. Yes, sir.
Q. You heard Mr. Tomlinson testify, did you not, a little while ago?
A. I did, yes, sir.
Q. Are you the one in charge of the Manhattan Division that takes control of the eastbound freight shipments of the Pennsylvania Railroad after they reach Jersey City?
A. I have charge of the Harsimus Cove, Jersey City and Greenville freight terminus, yes.
Q. And your jurisdiction extends to what point?

A. To a point known as The Cut, near Waldo Avenue yard at Harsimus Cove.

Q. And to transport the east-going freight to what point from Greenville and Jersey City?

A. You mean from the New York Division into Harsimus Cove yard?

Q. No; after it reaches Harsimus Cove yard.

151 A. It is transported then by float to New York, such freight as is consigned to New York.

Q. You have charge then of the transportation of eastward freight after it reaches Harsimus Cove, is that correct?

A. Yes.

Q. Are you familiar with Harsimus Cove yard?

A. Yes, sir.

Q. How long have you been the trainmaster there, Mr. Plant?

A. About six and one-half years.

Q. Is that blue print, D-1 intelligible to you?

A. Yes, sir.

Q. What does it show?

A. It shows Harsimus Cove yard, and also Jersey City yard, and the tracks leading from a point near the Cut in to those yards.

Q. Can you state which are the freight tracks and which are the passenger tracks there in the yard at the extreme right?

A. Yes.

Q. Where are the passenger tracks?

A. The passenger tracks are in here (indicating), running to Jersey City in the lower yard.

Q. That lower line?

A. This lower line here are the passengers tracks.

Q. Will you indicate the line which separates the passenger tracks from the Harsimus freight tracks in this portion of the yard here, in the yard itself?

A. From this point north, known as Harsimus Cove——

Q. From the freight shed north?

A. From the freight shed north.

Q. And the passenger yard is located——

A. The passenger yard is located south of that.

Q. From the freight shed itself?

A. No; we have a freight yard in here (indicating); this is the freight yard at Jersey City—the passenger yard is in here (indicating).

152 Q. Will you please indicate by some pier or street which will show approximately the line?

A. From Pearl Street north to Morgan Street is the Jersey City freight yards, and from Pearl Street south to the southerly side of the train shed is the passenger.

Q. Do you know what the storage capacity of Harsimus Cove yard is? The freight yard?

A. The working capacity of Harsimus Cove yard is approximately fifteen hundred cars. The entire storage capacity would be about two thousand.

Q. You have to have some open space to work the cars?

A. You have to have some open space for working.

(No cross-examination.)
Defendant Rests.

Rebuttal.

PETER S. COLLINS, sworn.

Direct examination by Mr. Stout:

Q. Where do you live?
A. Brooklyn, New York.
Q. What is your business?
A. Salesman in the produce business.
Q. Were you employed by Olivit Brothers during July and August, 1912?
A. Yes, sir.
Q. In what capacity?
A. In selling their watermelons; their other produce as well.
Q. Did that bring you to the Second and Henderson Street yard of the Pennsylvania Railroad every day, during those two months?
A. I think every day, yes, sir.
Q. What condition did you find in the Second and Henderson Street yard during the months of July and August, 1912?
A. Well, after about the middle of July I found a very congested condition.
153 Q. There are certain tracks in the Second and Henderson Street yard used for the delivery of watermelons?
A. Yes, sir.
Q. And that yard is the watermelon market for New York and vicinity, is it not?
A. Yes, sir.

Objected to as not rebuttal. Objection sustained.

Q. During the period from the middle of July on into August were there any other commodities placed on these watermelon tracks other than watermelons?

Mr. Hartpence: Objected to as not rebuttal. It is in evidence in the main case that there were other commodities placed on these tracks, and we made no particular objection to it as I recall.

The Court: I do not know whether the purpose of this evidence is not to show that there was plenty of room for the watermelon cars to have been brought in and their cargo unloaded if you had wanted to do it. In other words, when you say there was a great congestion there he wants to show that it was not the congestion that caused the delay, but something else. Is that the object.

Mr. Stout: Yes; and I will further then ask that the plaintiff's case might be opened to put in this testimony. I assumed that this was to meet their defense that the strike was the cause of the delay and congestion, and so forth——

The Court: Well, the strike was the cause of the congestion and the congestion was the cause of the delay; that is their case.

Mr. Stout: And we have a right to show how matters were manipulated in the Second and Henderson Street yard, showing
154 whether they did all that they could under the circumstances.

The Court: I think you have a right to show that, but as I understood it the objection was that this testimony did not tend to show that. There isn't any doubt about your right to do that.

(Question repeated.)

A. Not during the day.

Q. At what time were the watermelons usually placed on these tracks for delivery?

A. They were usually placed about seven o'clock in the morning.

Q. During this period you went to the yard and reached there about seven o'clock in the morning.

A. About seven to half past seven; between seven and eight.

Q. Would you find watermelons on these tracks as usual?

A. Not always, no, sir.

Q. What would you find there?

A. Well, we would find them drilling out and drilling them in; drilling out empty cars some mornings.

Q. Did you during this period find any peaches on these tracks?

A. Not to my knowledge. I found empty cars; I do not know what they had contained.

Q. I see. How was the watermelon business carried on in this yard?

A. We sell our watermelons in the yard.

Q. At auction?

A. Not exactly at auction; we sell them to the highest bidder in a private way.

Q. How was this market continued during this period of congestion?

A. The market was greatly demoralized.

Cross-examination by Mr. Harpence:

Q. How late in the morning would you stay around?

155 A. It all depended on how much business I had to do. Sometimes I left possibly about nine or ten o'clock, and sometimes one or two in the afternoon.

Q. That is during the period that this congestion continued that you referred to?

A. Yes, sir.

Q. Did you always wait till your watermelons came in?

A. Well, if I knew they were due or if I had any word of them I did, yes, sir.

Q. Did you ever leave during that period before they did get in?

A. Not to my knowledge.

Q. They always came in sooner or later during the day, did they not?

A. Well, we knew these cars were on what they call their storage yard. We did not always sell these watermelons on the working track.

Q. Sometimes you sold them from the storage yard?
A. Sometimes sold them on what they call their storage yard, what we call the hill. It is their storage yard.

By the Court:

Q. What was this congestion that you are talking about; what do you mean by that?
A. To me, are you talking?
Q. Yes; I am talking to you. In this yard?
A. Well, we had more stuff due to arrive than they could give us; in other words, we had advices and bills of lading for melons that we——
Q. In other words, your stuff didn't come; that is what you mean?
A. (Continuing:) —expected in four or five days. We would wait seven or eight; we did not get them.
Q. You do not call that congestion; that is delay, isn't it?
A. Delay, yes, sir.
Q. What do you mean by congestion? You have been talking about congestion; I want to find out what you mean by that.
156 A. What I mean by congestion, they had so much stuff that they could not handle it; that is what I mean.
Q. That is what you mean?
A. Yes, sir.

ANDREW SPADA, sworn.

Direct examination by Mr. Stout:

Q. What is your business, Mr. Spada?
A. Commission merchant.
Q. You are one of the plaintiffs in the suit of Andrew Spada and Dominick Spada against the Pennsylvania Railroad Company?
A. Yes, sir.
Q. During the months of July and August, 1912, in what business were you engaged?
A. In the watermelon business.
Q. And during that period did you have occasion to come to the Second and Henderson Street yard at Jersey City?
A. Yes, sir.
Q. What condition did you find there in the yard?
A. Well, the condition I found in the yard there, that I used to go there every day to sell my water melons, and when I used to go—and as a rule every time at seven o'clock in the morning we were selling out melons, and I used to go there and instead of finding my melons on the track I would find a carload of peaches and other kinds of produce, and then when we would inquire about it, inquire about our cars, they would tell us—tell me that——

Mr. Hartpence: I object to that.

A. (Continuing) —the cars had not arrived.
Q. Who would tell you this?
A. Mr. Phillips, the agent of the Penn. Railroad.

The Court: You do not object to that, I suppose?
157 Mr. Hartpence: No, sir.
The Court: All right.

Q. These peaches that you found on these watermelon tracks, do you know where they were billed to?
A. Yes, sir.
Q. How do you know that?
A. Because that was marked on the outside of the car with white chalk, pier 29, and that is the system they use; when they come to Jersey City they would mark "To Jersey City, if they came from outside where the cars was billed, most of the cars.
Q. And you found that condition existing from the 9th of July up until about the middle of August?
A. Well, I think about until the end of July.
Q. The end of July?
A. Yes, sir.
Q. That they were using these watermelon tracks for peaches?
A. Yes, sir.
Q. Had they previous to this time in July, to your knowledge, used these tracks for that purpose?
A. No, sir.
Q. Watermelons are unloaded by the consignees or owners of the melons, is that true?
A. Yes, sir.
Q. What is done to the watermelons after they are delivered to the consignees or owners in the yard at Second and Henderson Street?
A. Sold—sell.
Q. Sell them; and then they are trucked away?
A. They truck away, yes. The buyers come in the yard there and buy the melons and truck them away.
Q. The putting of the peaches on these watermelon tracks, what effect did that have upon the watermelon market?
A. Well, it would have considerable effect.
Q. Well, in what way?
158 A. Because they would deliver the peaches instead of watermelons. We would go there for watermelons and find peaches. We could not sell what we didn't have there.
Q. And when the watermelons were delivered, why, they were in a rotten condition?
A. Yes, sir.

(Objected to as leading. Objection sustained and the answer stricken out.)

Q. Well, what was the condition of the melons when they were delivered?
A. In a decayed condition.

Cross-examination by Mr. Hartpence:

Q. What time in the morning did you usually get there during this time you have referred to in July, 1912?

A. Anywhere from six to half past.

Q. And did you not always find your watermelons ready for you, you say?

A. No, sir.

Q. You always found the yard full of cars, did you, on those occasions?

A. Yes, sir.

Q. But your watermelons were not there?

A. Yes, sir.

Q. Well, what did you do then?

A. I would stay in the yard all day waiting——

Q. What say?

A. I would stay in the yard all day to find out, to se if our cars would come in.

Q. All day.

A. Yes, sir.

Q. How many times did you stay around all day?

A. Well, every day I did during the melon season.

Q. Every day during the melon season?

A. Yes, sir.

Q. How long does the melon season last?

A. Oh, it lasts from, I think, from about the 25th of May until the latter part of September anyway, but at times when I would
159 get through with my selling naturally I would go out; when I had nothing else there I would certainly go home. I would not stay in the yard and watch other people, certainly; it is understood, that.

Q. Well, didn't any melons come to you at all during that period in July you have referred to, and August?

A. Yes, sir.

Q. Well, what time of day did you get them?

A. Sometimes nine o'clock; sometimes ten; some times afternoon, and any kind of a time.

Q. Well now, you got some of them at nine o'clock in the morning, didn't you?

A. Well, very seldom.

Q. You got some, didn't you?

A. Possibly I had one or two cars.

Q. And you got some at ten o'clock?

A. Well, I cannot exactly tell the hour, but anyway from nine to two or three o'clock in the afternoon; I could not say.

Q. Well, I say you got some at nine, some at ten, and some at two or three in the afternoon?

A. Yes, sir.

Q. And then you would unload them and dispose of them, is that right ?

A. That's it.

Q. Ordinarily you used to get them about seven in the morning?

A. Yes, when we would go there at seven o'clock we would find our cars placed for the day.

Q. That was the usual delivery hour, seven o'clock; you did not expect them before that did you?
A. Well, no.
Q. And how long did you say that continued?

(No answer.)

Q. How long did you say that continued?
A. Oh, since the middle part of July, you know, until the end.
Q. You mean to the end of July?
A. Yes, sir.
Q. You handle simply watermelons, do you?
160 A. Oh, I handle different kind of produce, but during that time of the year I handle nothing but melons; possibly an odd car of potatoes, you know.
Q. And you say you would go for your watermelons and you would find peaches on the track?
A. Yes, sir.
Q. And those cars were moved out after a while, and then your cars came in; is that correct?
A. Well, some time.
Q. Sometimes your cars would come in between nine and two without the peaches being moved out; is that correct?
A. No.
Q. They always got through with the peaches before yours came in, did they?
A. Yes, sir.

CHARLES ALBRECHT, sworn.

Direct examination by Mr. Stout:

Q. Mr. Albrecht, you are the plaintiff in the suit against the Pennsylvania Railroad?
A. Yes, sir.
Q. What was your business in July and August, 1912?
A. Watermelon business.
Q. During those months you came to the Second and Henderson Street- yard, Jersey City?
A. Yes, sir.
Q. What condition did you find in the second and Henderson Street- yard during those months in reference to the delivery of watermelons?
A. The delivery of watermelons to me?
Q. Yes.
A. What condition I found them?
Q. Yes.
A. I found them in rotten condition.
Q. The Watermelons?
A. Yes.
Q. What hour of the morning would you come to this yard, about what time in the morning?
A. About seven o'clock.

Q. What was the usual time for watermelons to be put on
161 these tracks?

A. Well, they would put them on tracks during the night.

Q. But you found them there at seven o'clock in the morning?

A. Well, not—er—at the time of the strike I did not find them.

Q. You did not find them there during the strike, but before that you did?

A. We found them there, yes.

Q. Did you find or see anything on these tracks other than watermelons?

A. They took the watermelons out nights and delivered other stuff, put other stuff on the tracks and delivered that.

Q. Did you see any of that stuff there?

A. Oh, yes.

Q. What was it?

A. Peaches and stuff like that—vegetables.

Q. What effect did the placing of peaches on these tracks have upon the watermelon market there?

A. After they cleaned those cars out they took those cars out and brought ours back again that they took out during the night, they would bring them back about nine or ten in the morning.

Q. That delayed the delivery of your cars?

A. Certainly.

(No cross examination.)

Plaintiff Rests on Rebuttal.

Sur-rebuttal.

ABRAM B. PLANT, recalled.

Direct examination by Mr. Hartpence:

Q. Mr. Plant, you know about the delivery of peaches at the Henderson and Second Street yard during the strike that has been testified to?

A. Yes, sir.

162 Q. When they were held back from pier 29, where else could they have been delivered at the Jersey City end of this line, except at that yard?

A. The yard known as the Henderson Street yard and the private sidings leading therefrom were the only available point that we had where we could deliver them. Not only the Henderson Street yard but also the private sidings were used to the extent of the sidings to deliver peaches on.

Q. That was done at night time, was it?

A. That was done at night time.

Q. At times of congestion what is the rule about delivery of perishable freight, or the degrees of perishable freight?

Objected to as immaterial. Question withdrawn.

Cross-examination by Mr. Stout:

Q. There would have been room to have held these peaches that were billed to pier 29 out in the Meadow yard, would there not?

A. I do not know what room there was in the meadows yard; I do not have charge of the Meadows yard.

Q. Did you have charge of any other or know anything about it?

A. I have charge of Harsimus Cove yard and Jersey City freight yard and Greenville yard.

Q. The Harsimus Cove yard would have been large enough to have stored these peaches, would it not, rather than to put them on the delivery tracks?

A. There were possibly tracks where peaches could have been placed, but they could not have been delivered. They were not delivery tracks; they were not team tracks.

Q. But you had yard space enough there to have stored these peaches if you had not delivered them at the Henderson street yard?

A. Doubtless we could have stored them where we had watermelons.

163 Q. In other words, you could have stored them where the watermelons were stored?

A. Yes, sir.

By Mr. Hartpence:

Q. What would have been the effect of storing them there, holding them, instead of delivering them as you did at night time?

A. The peaches would have doubtless spoiled.

Q. Are they highly perishable fruit?

A. Highly perishable.

The Court: I guess we will all admit that, won't we?

Mr. Stout: Yes.

Testimony closed.

Motion for Direction of Verdict.

Mr. Hartpence: We make a motion for a direction of a verdict on the ground that there is no negligence shown on the part of the defendant to charge it with liability for the damage to these watermelons. As the case stands it seems to me it is simply this, that the stipulations show the receipt of the watermelons at Edgemoor, Delaware, presumably in good condition——

The Court: I want first of all to understand your motion. You say that there is not any negligence shown. I do not understand under any of the cases that the plaintiff is under any obligation to show negligence. My understanding of the rule is that the burden rests upon the defendant to excuse itself by showing that it was not negligent.

Mr. Hartpence: Yes, I will make myself clear there. That there is no negligence shown upon the part of the defendant after the defendant has proved the excepted cause in the bill of lading, that

under these bills of lading that are in evidence in these cases
164 the carrier claims exemption from liability because there was a strike which it says was the proximate cause of the delay complained of. By this contract between the shipper and the initial carrier, which inures to the benefit of the succeeding carrier, and to the benefit of the holder of the bill of lading, the carrier is relieved from liability in case of a strike, under certain of the bills; he is relieved from liability in case of occasions beyond its control under others; he is relieved from liability in the case of an accumulation of freight, which is proved to be a matter which is beyond his control. Now we feel as the case now stands that the testimony shows affirmatively so far as the plaintiff is concerned that the proximate cause of the delay that is complained of is the stipulation or the ground set forth in the bill of lading, namely, a strike—accumulated freight—matters beyond the control of the defendant. Now having done that it seems to us that we have exonerated ourselves, or we have brought ourselves within the protection rather of the stipulation in the bill of lading, and it then is incumbent upon the plaintiff if he hopes to recover to show that after we have brought ourselves within the protection of the stipulation of the bill of lading that still in one way or another we failed to handle the situation at that time in a way which was free from negligence; in other words, it shifts the whole issue, as we understand it, from the general allegation of the negligent carrying of these goods so that they deteriorated because of delay to the allegation that the injury was caused because the defendant failed to perform the duty which it was obliged to perform in the law. The whole question is whether or not when the proof is that there was the excepted cause we did what we should have done to meet the situation, and the burden there is to show that we did not do what we ought to have done.

165 The Court: As a matter of pure technical law I should think you were wrong, although I think there is a whole lot of rightness in what you say. I do not think it shifts the burden at all; I do not think you have any case that says it does. I think that what happens is this: that after the plaintiff has made out the case of having delivered the goods to the company and their not having delivered them within a reasonable time, I think that casts upon the defendant the burden of establishing some excuse by way of defense. I think that excuse is an affirmative defense, and they have got to make it out by the greater weight of the evidence. I think that the burden that then rests upon the plaintiff is not of overcoming by the preponderance of the evidence that defense thus interposed, but I think that the burden then cast upon the plaintiff is the burden of merely going forward with the proof, and that then my duty is to rest the case with the jury and to tell them they are to say whether or not the defendant has made out the excuse urged by him by the greater weight of the evidence. If he has not, then I think the plaintiff is entitled to a verdict. In other words, I do not think the burden of proof shifts at all. I think that you offer a defense and you have got to make that defense out to the end of the case by the greater weight of the evidence. If you do not make it out by the greater

weight of the evidence you fail. I do not think it shifts any burden at all; it simply shifts the burden of going forward with some evidence, if he thinks it necessary to do so, upon the plaintiff. Now the plaintiff in this case I suppose thinks it is not necessary to do so, and therefore he says, or he may say now, that this is his attitude: that you have offered proof of a strike; now he claims that the bill of lading, having emanated from the initial carrier, and inuring
166 to your benefit through the Carmack amendment, is something which is to be strictly construed against the railroad company and the intermediate and final carriers who transport the goods from the point of origin to the point of destination, and that being required to be strictly construed against the railroad company that you are obliged to bring yourself within the technical definition of a strike as he claims it to be. That strike I suppose he argues means that there must be some sort of coercion, either moral or physical, exercised upon the defendant company by its men who go out on strike; that they must either desire to coerce for the benefit of somebody else some action or some concession on the part of the defendant company, and that anything short of that is not a strike in legal contemplation. Now I am not saying whether that is the definition of a strike or whether it is not; I am simply saying that that probably is the attitude that he will take in respect to that; and then he will say that that being so the matter which you have sought to establish here is not a strike within the meaning of the technical definition of a strike which he contends for, and that therefore you have not brought yourself within that clause of the bill of lading which excuses if there be a strike as the proximate cause of the delay. And then secondly I suppose he would argue that inasmuch as I may decide that what actually did occur here was a strike, that that strike was not the proximate cause of the delay; that the proximate cause was the negligence of the railroad company in not getting other employees sufficient to handle the freight, or in not furnishing other facilities by way of tracks or what not which would enable them to dispose of both the peaches and the watermelons within a reasonable time, and he
167 will say that your proof does not come up to the measure of showing that the strike was the proximate cause but that it leaves it open for the jury to say whether the proximate cause was the strike or the inactivity or lack of diligence of the defendant company. That probably is what he will say the issue now is, and that the burden of the establishment of the defense along that line rests upon the defendant company. Then I suppose with respect to the congestion that you claim is a defense, he will probably contend that that congestion is a congestion which is due to the negligence of the defendant company in not furnishing proper facilities or a sufficient number of men or not getting other piers or not doing something which would enable them to dispose of the freight which they had taken on for delivery, and not due to the strike as its original cause. I suppose that is the attitude that Mr. Stout will assume in this case. I do not know, but that is what I think.

Mr. Hartpence: Perhaps we are pretty nearly on common ground

upon the situation, if the Court please. Our real argument is that he has not done that. The burden is upon him to produce evidence upon that point.

The Court: He is not obliged to do it in case he thinks, and correctly thinks, that the case made by the defendant is not sufficiently strong to require it. If the case were what you would call airtight, why manifestly he would have to come forward and do something or die; but the case in his judgment may not be of that character. He may say, "Well, there is some evidence here, but there is plenty of ground for inference by the jury from the facts in the case to show that the real cause of the delay was the inactivity. I suppose it might be well while we are on the point to hear what Mr. Stout does have to say about it.

168 Mr. Hartpence: I have one or two other points I desire to urge a direction of a verdict in favor of the defendant on the ground that it is not affirmatively shown in the case that the plaintiff Olivit Brothers in four cases were the owners of the watermelons at the time the shipments were made.

The Court: That is the point you raised the other morning on the interrogatories?

Mr. Hartpence: Yes. And on the further ground that in so far as those counts are concerned in the different cases, the stipulations show—I haven't them at my tongue's end—the stipulations show that the claims were not presented within the time limited by the stipulations in the bills of lading; that as to those counts the defendant is entitled to a direction of a verdict because there is no evidence aside from the stipulations to show that they were presented within the time limited by the stipulations in the bills of lading. Certain of the bills of lading provide that in case of damage or injury—

The Court: Yes; I recall. The claims must be presented within ten or thirty days or four months.

Mr. Hartpence: So far as certain cases were concerned, we are satisfied that claims were made; in the Olivit cases where four months applied, and in the Spada and Albrecht where the four months applied. In the Spada and Albrecht cases, however, there were certain shipments where they were obliged to present the claims within ten or thirty days, and the evidence does not show that that was done; and for that reason we are entitled to a direction of a verdict as to those counts.

Mr. Stout: As to Mr. Hartpence's first point, I would like to read to you from Your Honor's charge in the Spada case, which I think is the law and was not criticised by the Court of Errors: "If

169 the Pennsylvania Railroad Company has made out by the greater weight of the evidence that there was a special contract of limitation, you then come to the question as to whether or not this strike was the proximate cause of the delay in delivery of these watermelons, and the burden of establishing that the strike was the proximate cause of the delay in the delivery of the watermelons rests upon the defendant company. If it has not made out that it was, why then the strike does not exempt the company from

liability on that ground. Secondly, they would be obliged to make out by the greater weight of the evidence that the causes which were beyond their control which they contend prevented the delivery of these watermelons were the proximate cause for their non-delivery on time. If they have made that out, why, that would be a defense and the company would not be responsible; if they have not, of couse it would not be a defense and they would be responsible." Your Honor there was directing your charge to the situation if the bills of lading were contracts. Now further on that point we have a line of cases which hold that the loss must be a proximate loss of a cause as to which the carrier has exempted himself from liability in order that he shall be relieved under such exemption, and the special cause must be the sole cause of the loss, for if the negligence of the carrier mingles with it as an active cooperative cause the carrier will be responsible.

The Court: That brings us down to what I said a moment ago to Mr. Hartpence.

Mr. Stout: Yes. Now on the question of ownership, I think your Honor rightfully disposed of that last Friday.

The Court: Oh, you need not argue that question. I am perfectly willing to let that go in the record and to deny the motion
170 on that ground right now so far as that ground alone is concerned.

Mr. Stout: On the point urged by Mr. Hartpence that claims were not filed within the required time under those bills of lading which have the ten and thirty day clause, there are stipulations in evidence in each one of those cases. The sixty-four count case of Olivit is not affected by it because they were all four months bills of lading. In the other cases there are stipulations to the effect that claims were filed on a certain day, which date was subsequent to the ten or thirty days, and that the carrier in rejecting those claims did not raise the question that the claims were not filed within time, but put in on the ground that there was no negligence or any liability on their part on account of the congestion; and there is a line of cases which hold that the requirement for making claim for damage within the time and in the manner specified may be waived by negotiating and considering with reference to the claim. Now they took these claims under consideration and rejected them not on the ground that they were not filed within time, but because of the fact that they say——

The Court: What case do you refer to?

Mr. Stout: Central R. R. Co. vs. Pickett, 87 Georgia; Cleveland, etc., vs. Heath, 22 Indiana Appeals, 47; Mason vs. The R. R. Co., 42 Iowa, 231——

The Court: Let me ask you this: In those cases did the entertainment of the claim and the discussion on the claim and the rejection of the claim precede the time when the limit would have expired?

Mr. Stout: No; it was after the time had expired, the claim had been filed and then rejected.

The Court: No; I mean were the claims that were re-
171 jected after the time had expired interposed with the railroad company before the time had expired?

Mr. Stout: Were they filed with the railroad company before the time had expired?

The Court: Yes; or were negotiations opened for the purpose of settlement?

Mr. Stout: Within the time?

The Court: Yes.

Mr. Stout: No; after the time.

The Court: You are sure of that?

Mr. Stout: Yes; and we also have an analogous line of cases in this state on the question of fire insurance policies. It is a question of forfeiture——

The Court: There is no question about that. The rule is perfectly clear that the law leans against a forfeiture in almost every instance and will grab at very slight causes of waiver to avoid declaring one. Those are very general rules; but let us hear what the fire insurance cases hold.

Mr. Stout: Schenck vs. Mercer County Fire Insurance Company, 4 zab., 408.

The Court: To what point?

Mr. Stout: On the point of filing proof of loss within the time required by the insurance policy; and then there is this evidence which I think it is proper for the jury to consider: the refusal slips which were filed in the Spada and Albrecht cases. Those refusal slips were filed at once and the company has never raised any question as to claims not being filed in time, and the only time it was raised was when they came to file their answers in these suits.

The Court (To Mr. Hartpence). What do you say about this line of case that Mr. Stout suggests with respect to the time?

Mr. Hartpence: I have not had an opportunity to read those cases specifically. I have read most of them, I think, but
172 I do not recall them by name; but there is a line of cases which would seem to indicate that if a claim is received and entertained where the claim must have been presented within a certain time and then is rejected upon some other ground than on the specified ground that it was not filed within time, that is some indication——

The Court: Then expressio unius est exclusio alterius?

Mr. Hartpence: Yes. I hardly know what to say about the conclusiveness of those cases upon this question except this, that there is no doubt in my mind, and I am going to assume that the Court will concur with me in this statement, that these shipments are governed exclusively by the interstate commerce act, being interstate shipments, and rules laid down by the United States courts in the interpretation of that act—the construction of it—and the Supreme Court of the United States has indicated clearly that all state rules and regulations give way.

The Court: There is no doubt about that. I agree with you on that.

Mr. Hartpence: And for that reason I am arguing that in the absence of any specific case as yet upon that point in the United States Supreme Court that I have been able to find, it is still open ground.

The Court: And you want the question on the record anyway?

Mr. Hartpence: Yes; and I think that the reason, the spirit of the law is with us and that the spirit of the situation is with us to the effect that those state cases will be perhaps laid aside by the United States Supreme Court when they come to adopt their own rule. The purpose of the interstate commerce act was to

173 put the control of interstate commerce under the provisions of the act of congress and within the power of the Interstate Commerce Commission and wholly within the rules laid down in the United States court; and it seems to me that when the stipulation is made by the carrier and the shipper to the effect that the claim must be presented that they will be held by the United States Supreme Court to have contemplated doing just exactly what they said they would do; and we can at least go back into the situation far enough to consider this: that the object and purpose of that is undoubtedly to furnish the carrier—and an interstate carrier must of necessity be a carrier whose system extends much more extensively and universally than the mere intrastate carrier; it extends over such a vast area of territory that unless he has prompt notice of claims and of the cause of the trouble it soon gets beyond his power to ascertain what the real cause of it was; and for that reason——

The Court: But don't you see that that argument does not really touch this point at all because all the carrier has to do under this statute and the decisions that are undoubtedly to be made under it, whether they be the way you contend or the way Mr. Stout contends, will be to say, "We reject this because the claim was not presented in time." That ends it. Then this question of waiver has no opportunity to intervene at all. If the ten day clause is there, then under the construction to be given to the contract by the United States Supreme Court, which holds that it is the contract as made between the parties in the bill of lading, the party has a right to rely upon that thing, and in the absence of waiver he simply declares his intention to rely upon that clause and say, "There is no claim; you can't get in." I do not see how that tends to destroy waiver at all.

174 Mr. Hartpence: What I was leading up to is this: In the operation of that system it becomes necessary, as in this case—and that is indicated by the letters that are in evidence, and I will not go outside of those—that it is necessary perhaps to do it through the claim department of the company, and when we think of shipments being made from a point in the very southern part of the country up to this point, and—while there isn't any evidence on it I can state to your Honor that it is often a very difficult thing for the carrier to trace out the bill of lading issued by the initial carrier to ascertain what those terms are—it is a very possible thing that the claim department of the final carrier might

consider a claim presented to it and reject it upon some other ground before it actually had an opportunity to find out what the stipulation of that bill of lading was. That is not offered as a reason for excusing them, but as a suggestion that perhaps the final construction laid down by the Supreme Court of the United States will be in favor of a strict construction of the stipulation, because of the fact that these interstate commerce rules now have been worked out through the fine efforts of the Interstate Commerce Commission, committee of carriers and congressmen and all those men who have gone over this ground, and that really required——

The Court: It sounds complex, but it is very simple. Any carrier can protect itself with absolute security and conclusiveness, because all he needs to do if he has not yet gotten track of the bill of lading is to say to the person who presents the claims, "I have no knowledge or notice of the bill of lading; I do not know what the provisions are, and must decline the consideration of your claim until I have obtained it:" and that ends it until he has obtained it; and then he gets it and he avails himself of the
175 provisions. That is a simple thing; it is not a hard job. And furthermore he could require every person who filed a claim to agree in writing that he, not having the bill of lading, considers the claim without prejudice to any right that he may thus ascertain he has to reject it because of the time limit when the claim itself should be presented to him. You could have a lot of blank forms of that kind and make the person sign one and that would end it. It is all simple and all perfectly plain. I do not think that the court is going to fracture a rule of law that started way back in the dawn of jurisprudence, where the whole effort was to get away from forfeitures and to get at the real merits of the case and to give the strictest kind of construction to a contract which involved a forfeiture; I think the United States Supreme Court is going to hold that that is the law when the times comes, and I think in this case or in any case like this the United States Supreme Court will undoubtedly say that all the ordinary rules of construction of a contract apply. It is true that this is a contract: it is true it is conclusively a contract between these parties by virtue of the Carmack amendment, and it is true that we are to give it such construction as the rules of law require. Now what is the construction with respect to this forfeiture clause? Why, the ordinary rule of construction is that the law leans against a forfeiture and will if it can give effect to a waiver if there is any evidence of it. The United States Supreme Court will undoubtedly say, "Was there any evidence here? If there was, it was for the jury, and the judge left it to the jury, and the jury decided either that there was or there was not. We do not see why we should interfere with that verdict if there was any evidence to support
176 it and it was not so overwhelmingly against the evidence as to indicate bias, prejudice or corruption or some other ulterior motive which destroys the validity of it." So I think under the case as it now stands that I must deny the motion and you may have your objection to that denial entered upon the record.

Mr. Stout: If Your Honor will permit, since this question is being raised and is to be passed upon, I would like also to put the ground upon which some of these claims should stand upon another ground. In the Albrecht case all of the cars were rejected and some of them in the Spada case, and I would like to read from your charge and from some cases that I presented to Your Honor at that time, which I thought was the law, and I think it is still the law: "Now I charge you that with respect to those four bills of lading, that condition does not apply to the shipments in this case, and the reason for that is this: that these shipments were perishable freight, and when these melons were injured and destroyed, if they were injured and destroyed by the negligence of the defendant company, it could hardly be said that the company was promoting the interest of the shipper when it sold the results of its own negligence and deducted its own freight and legitimate expenses from the proceeds." And this further point: that "such stipulations (that is referring to the filing of claims) have been held not applicable to depreciation in property due to delay in transportation nor to a case where the consignee refuses to receive the property on the ground that it is not tendered in proper condition;" the reason for that being that no one knows better than the carrier if he has destroyed the stuff due to delay than the carrier if the stuff is refused.

177 The Court: Well, I am glad to have you put it on that ground, but I won't in this case.

Mr. Stout: I want it there, understand.

The Court: Yes; it is on the record. I do not think I will make a new contract between the parties. They have made their contract and it governs the various things that are in it.

(Adjourned to March 24, 1915.)

The Court: I found a case last night, gentlemen, that probably neither of you has found, with respect to the waiver of the provision for thirty days or ten days or four months. The supreme court of Maryland has passed directly on that point in construing the Carmack amendment. You will find this in the case of the Peninsula Produce Exchange of Maryland vs. New York, Philadelphia and Norfolk R. R. Co. in 89 Atlantic Reporter at page 437. There the court held that "A stipulation in the bill of lading against liability of the carrier for damages, unless claim be presented in four months, is waived by the carrier, with knowledge, not raising objection of time of presentation, but rejecting the claim on the ground of proper delivery of the goods." That is directly on the point, and the court was unanimous in the opinion on it.

(The statement of damages under the defendant's contention, which by agreement of counsel is submitted to the jury and is to become a part of the record in these cases, is as follows:

Olivit v. P. R. R. (64 Counts)	$13,465.00	
Deduct sale price	8,895.00	
		$4,570.00
Olivit v. P. R. R. (13 Counts)	$3,025.00	
Deduct sale price	2,080.00	
	945.00	
178 Deduct claim filed out of time	250.00	
		695.00
Olivit v. P. R. R. (11 Counts)	$2,375.00	
Deduct sale price	1,520.00	
	855.00	
Deduct 6 claims filed out of time	445.00	
		410.00
Olivit v. P. R. R. (7 Counts)	$1,500.00	
Deduct sale price	915.00	
	585.00	
Deduct 3 claims filed out of time	245.00	
		340.00
		$6,015.00
Spada v. P. R. R. (9 Counts)	$2,050.00	
Deduct sale price	680.53	
	1,369.47	
Deduct 5 claims filed out of time	569.47	
		800.00
Albrecht v. P. R. R. (9 Counts)	$1,375.00	
Deduct 4 claims not filed in time	600.00	
		775.00
Total		$7,590.00
Interest to be calculated		.....

(Mr. Stout hands the jury memorandum reading as follows): by like agreement of counsel.

OLIVIT BROS.
vs.
PENN. R. R. CO.

64 Counts.

Value of Watermelons at place and time of shipment		$13,465.00	
179 Sold for owing to damaged condition		8,895.00	
Freight paid		5,484.59	
Net proceeds of sale		3,410.41	3,410.41
Damage			10,054.59
Int. for 2 yrs. 7 mo			1,558.46
Total damages			11,613.05

13 Counts.

Value of Watermelons at place and time of shipment		$3,025.00
Sold for owing to damaged condition	$2,080.00	
Freight paid	1,182.47	
Net proceeds of sale	897.53	897.53
Damage		2,127.47
Int. for two yrs. 7 mos		329.69
Total damages		2,457.16

11 Counts.

Value of Watermelons at place and time of shipment		$2,375.00
Sold for owing to damaged condition	$1,520.00	
Freight paid	939.92	
Net proceeds of sale	580.08	580.08
Damage		1,794.92
Int. for 2 yrs. 7 mos		278.21
Total damages		$2,073.13

180 7 Counts.

Value of Watermelons at place and time of shipment		$1,500.00
Sold for owing to damaged condition	$915.00	
Freight paid	667.97	
	247.03	247.03
Damages		$1,252.97
Int. for 2 yrs. 7 mos		194.21
Total damages		1,337.18

ANDREW SPADA et al.
vs.
PENN. R. R. Co.

9 Counts.

Value of Watermelons at place and time of shipment..		$2,050.00
Sold for owing to damaged condition.....	$680.53	
Freight paid	549.29	
Net proceeds of sale.....	131.24	131.24
Damages		$1,918.76
Int. for 2 yrs. 7 mos.....		297.11
Total damages		$2,215.87

CHARLES ALBRECHT
vs.
PENN. R. R. Co.

9 Counts.

Value of Watermelons at place and time of shipment..	$1,375.00
All refused owing to damaged condition.	
Int. for 2 yrs. 7 mos.....	213.13
Total damages	$1,588.13

181 *Court's Charge to the Jury.*

The Court: Now, gentlemen of the jury, you are trying here six cases and you will be obliged to render six separate verdicts, that is one in each of the six cases that you are trying. The cases were brought together because in effect they were of the same general nature and the same issues were involved in all of them, and it tended to save time and to not at all interfere with justice to try them all together. Therefore what I have to say in a general way will be applicable to all the cases. When you come to determine, however, the amount of the verdict, if any, which shall be given in each case, why, that you will figure from the memoranda that have been furnished you by the counsel of both sides, and as you find either in favor of the contention of the plaintiff or the defendant you will take the figures furnished by one or the other as the case may be and find a verdict in accordance with them. I have had those figures given to you because it would be humanly impossible for a jury to carry them all in their minds where there is such a tremendous number of them and they are all applicable to different cases.

Now the general rules that I desire to give to you to enable you to decide the case in accordance with what I conceive to be the rules of law are these:

First of all, these six cases are all brought against the same defendant, the Pennsylvania Railroad Company, which is the final

carrier of some watermelons that were shipped from points in the south to the watermelon yard, so called, at Henderson and Second Streets in Jersey City. The object of the suit is to recover damages for the alleged delay which the plaintiff says took place
182 in the shipment and which resulted, as the plaintiff claims, in the deterioration of some of the melons and the destruction of others. Now the precise claim made by the plaintiffs in all the cases is well set forth by reading a count in one of them. That count is as follows in one of the Olivit cases:

"On August 1, 1912, at Maxton, in the State of North Carolina, the plaintiff caused to be delivered to the defendant, which was a common carrier of goods for hire from Maxton aforesaid to Jersey City, in this state, one carload of watermelons of a certain value, which the defendant then and there received and accepted as such common carrier, to be transported carefully and within a reasonable time to the plaintiff at Jersey City aforesaid for reward or pay."

The plaintiff charges that the defendant, in violation of its undertaking and duty, failed and neglected to carefully transport the said watermelons from the point aforesaid in the south to Jersey City aforesaid and failed and neglected to transport the same within a reasonable time, and by reason thereof a large number of said watermelons was wholly lost to the plaintiff and the remainder was delivered by the defendant to the plaintiff at Jersey City in a bad and damaged condition. And that is the general nature of the complaint that is made in all the cases by the plaintiffs in these cases against this defendant.

Now the defendant sets up some defenses in this case against the claim. They do not deny that they are common carriers for hire; they do not deny that as the final carrier these goods were received by them at a place called Edgemoor in Delaware and were transported by the defendant company from Edgemoor to Jersey City.
183 They do not deny that there was some delay over the usual time under ordinary circumstances in the delivery of goods, and they do not deny that some of the goods were damaged, and as I understand it they do not deny that some of them were destroyed. They claim, however, that the conditions under which the deliveries were made were such as to excuse the defendant company in contemplation of law from liability because of that damage and destruction. The first claim made by the defendant in its excuse is that the delay was caused by a strike accompanied by demonstrations of violence over which it had no control and against which it was impotent to contend while the strike lasted; that therefore the strike, having caused the delay in the transportation, comes directly within one of the provisions of the bill of lading, which is the contract between the parties in this case, which excepted from liability the company in cases of delay or injury or destruction caused by strike. Their second claim is that there was some congestion of freight and that that congestion was due to causes beyond the defendant's control, and that that comes within one of the exceptions in the contract between the shipper and the defendant company, of which exception in the bill of lading the defendant company has a right to take advantage even

though the exception was incorporated in a bill of lading made with the initial carrier in the south, because the Carmack amendment, so called, to the federal statute provides that a bill of lading made with the initial carrier inures to the benefit of the carriers all along the line of transportation; and therefore they say that there was a congestion due to causes beyond their control, to wit, a strike accompanied by violence, and that that cause beyond their control
184 having caused that delay excused the delivery within the ordinary or usual time which would have been consumed in the transportation of the goods if it had not been for this unexpected and insuperable obstacle which intervened. And then they claim in some of the cases by way of defense that the party who has a right to make a claim of destruction or deterioration of the goods due to delay was required by the provisions of the bill of lading, to make those claims within ten days in some cases, thirty days in others, and four months in others, and they claim that the plaintiff did not make these claims in writing as he was required to do within the time specified, and that therefore the claims not having been made in that way the defendant is excused from liability on that account and is not obliged to respond in damages.

Now those as I understand it are the defenses interposed by the defendant in the case against the claim of the plaintiff. Now these suits are rested upon bills of lading, and those bills of lading are the contracts between the parties in the case, and the case is grounded upon what is called popularly the Carmack amendment. The Carmack amendment is an amendment to the statute of the United States with respect to interstate shipments, and the object of the amendment is to make a uniform rule applicable to shippers and railroad companies alike all over the Union so that there will be no longer any uncertainty due to state legislation and state decisions and federal legislation and federal decisions which differ in various places and with respect to various kinds of shipments. The object is to establish a uniform rule, and therefore the courts have held that the Carmack amendment supercedes all state legislation
185 upon the subject, and the contract between the parties wherever the bill of lading is not inimical to the federal law is the binding contract between these parties and is not in any way changed or amended or modified or qualified by any state legislation or state decision upon the subject. Now as bearing upon that subject the Court of Appeals in our own state has used this language with respect to that amendment. The Court says:

"One of the dominating features of the Carmack amendment is its mandatory requirement that the initial carrier shall issue to the shipper a receipt or bill of lading for property received by it for transportation from one state to another. Such receipt or bill of lading is in form and in essence a contract and when issued constitutes the agreement between the shipper and the carrier which regulates and defines their respective rights and liabilities, except as to stipulations contained therein which are repugnant to that amendment or other federal law. By force of that amendment the delivery to and acceptance by the shipper of such bill of lading

constitutes it a binding contract on his part so far as the valid provisions thereof are concerned, even if he does not know of the stipulations contained therein and has not by any act except the mere acceptance of the bill signified his assent to them, and not only are the valid stipulations of the bill of lading binding upon the shipper to the initial carrier that issues it but they also inure to the benefit of every common carrier along the route over which the goods are forwarded."

The Court in the case I have just read from also held that the stipulations in the bill of lading with respect to the requirement as to filing the claims within a specified time and with respect to
186 the delay due to causes over which the carrier had no control, such as strikes or congestion of freight due to causes beyond the control of the carrier were valid stipulations and were not in antagonism either to the amendment to the law—the Carmack amendment—or to any other valid law. They are valid stipulations of which the defendant has the right to avail himself, and if he brings himself within them to have you say that he is freed from liability.

Now that brings us then to consider what is the duty of a common carrier with respect to the carriage of goods that are offered to him or to some prior carrier in the line of carriage and eventually coming into his charge and custody and possession and control for transportation. What duty does he owe the shipper with respect to those goods? Now the law has been laid down with respect to that, gentlemen, in these words:

"A carrier of goods is bound to exercise reasonable care and diligence in transportation to transport within a reasonable time so as to prevent loss or damage or delay. What is reasonable diligence in transporting goods must depend upon the circumstances of the particular case, the carrier having the right to discriminate in favor of perishable goods when the exigencies require it. In the absence of a special contract or special circumstances to take the case out of the general rule, a carrier is not bound to use extra-ordinary means to forward even perishable freight, as the shipper must be presumed to have contemplated carriage by regular train on their usual schedule."

That I state to you, gentlemen, states the law with respect to that subject; and as bearing upon it further the Court said this:

"The duy of the defendant as a forwarding carrier, and
187 as well the duty of all connecting carriers, was to exercise reasonable care and diligence in transportation to transport in a reasonable time without unnecessary delay, to prevent so far as reasonable and practicable and so far as reasonable care will effectuate that result any loss or damage which may be occasioned by delays in transit. What is reasonable diligence in this class of cases, as in all others where reasonableness is the standard, must depend upon the circumstances of the particular case. It has been held that the carrier may discriminate under some circumstances between different classes of goods, where the exigencies require it, as where one class is perishable and the other is not. In such case if unable

to carry both classes at the same time the carrier may give priority of carriage to the perishable goods, and throughout other emergencies which may call for discrimination. On the other hand in the absence of a special contract or of special circumstances which take the case out of the general rule, the carrier is not bound to use extraordinary means to forward even perishable freight. It is not bound to make up special trains or perform special service. The shipped must be understood to contemplate carriage by the regular trains on the ordinary schedules. If he desires special service he may contract for it."

Now that is the rule, gentlemen, that the law has laid down with respect to the duty which rests upon the carrier in the transportation of goods with respect to that phase of the case that has to do with delay in their transportation. Now as bearing upon this phase of the case I have been requested by the defendant to charge certain things. I think, however, before I charge them I may go to a step farther in the discussion of the case with you. You will
288 have observed that I said a few moments ago that the defendent could excuse itself by showing that it came within one of the exceptions stated in the bill of lading, either that there was a strike accompanied by violence which interrupted the due and ordinary and usual course of its business, or that there was a congestion due to causes beyond its control, or that the claims were not filed within the time limited in the bill of lading for the filing of them. Now, those, gentlemen, are defenses, and the burden of establishing the existence of those defenses rests upon the defendant, and the defendant is obliged to make them out by the greater weight of the evidence. If the defendant shall make out by the greater weight of the evid-nce that there was a strike and the strike was the cause of the congestion of the freight which resulted, if it did result, in the delay in the delivery and the consequent decay of the produce, why manifestly the defendant would excuse itself on that ground, unless the plaintiff then took up the burden and showed by the greater weight of the evidence that even though there was a strike the defendant in the handling of the strike, or in the handling of the produce, or in dealing with the situation, did not use reasonable care to deliver the goods within a reasonable time to the consignee. If the plaintiff makes that out by the greater weight of the evidence that amounts to what is known in the law as negligence, and the negligence would render, if that is established by the plaintiff by the greater weight of the evidence, the defendant responsible notwithstanding the fact of the strike. Now when I said that the burden of establishing the negligence rested upon the plaintiff I did not necessarily mean that the plaintiff is obliged after the defendant gets through with its evidence to put more evi-
189 dence in, because the burden upon the plaintiff is upon the whole evidence to make the evidence weigh heavier in favor of the negligence of the defendant with respect to the delay in delivery than it does the other way. If the evidence does weight heavier in favor of the negligence of the defendant company than it does in favor of the freedom from negligence of the defendant

company, why then of course the plaintiff was under no obligation to offer any further proof, because then the evidence would preponderate in that particular and the plaintiff might very well rest at that point without putting in any further proof on that ground. But the burden rests upon the plaintiff to establish the negligence by the greater weight of the evidence. If the plaintiff has thus established it the plaintiff is entitled to recover upon the ground of negligence. If it has not it is not.

Now the same rule applies with respect to the congestion of the freight due to causes beyond the control of the defendant. The defendant is obliged to make out the fact of the congestion as an excuse by the greater weight of the evidence. If the defendant thus makes out the fact of the congestion and its operation as a cause in the delay and consequent decay of the fruit, why then the plaintiff is obliged to bear the burden of establishing by the greater weight of the evidence that that congestion and the consequent delay was due to the negligence of the defendant; and the remarks that I made with respect to the other defence apply equally to this. The plaintiff does not have to go on and introduce proof after the defendant gets through with its proof, if already there is evidence in the case—and whether there is or not I do not say; I leave that for you to determine—if already there is evidence in the case
190 preponderating in favor of the negligence of the defendant in that particular as against its freedom from negligence. And with respect to the other defense offered by the defendant, with respect to some of the cases, that these claims were not filed within ten days, or thirty days or four months, if the defendant makes out—and it is admitted here in the stipulation that in some cases these claims were not filed within those times—then the burden rests upon the plaintiff to go forward with the evidence and to establish by the greater weight of it that there was a waiver of the filing of those within time, if the plaintiff will obviate the disability that arises from the fact that he did not file them within time.

Now a waiver under the law has been held to be the voluntary relinquishment of a known right, and the plaintiff therefore is obliged to produce evidence and make it preponderate in favor of the proposition that the defendant in this case with respect to those claims being presented in writing waived the necessity on the part of the plaintiff of thus presenting them, by showing that the defendant voluntarily relinquished the right that it knew it had to demand the presentation of those claims in writing as a condition precedent to the attaching of the obligation. If the plaintiff has made that out by the greater weight of the evidence why then the fact that the claims were not filed within time will not defeat the right of the plaintiff to recover in those cases, for the waiver operates favorably to the plaintiff and the plaintiff is entitled in those cases to recover if he makes out the waiver by the greater weight of the evidence.

Now those are the rules, gentlemen, that stated in a general way will govern you in arriving at the question of liability or non-liability in these cases.

191 I have been requested by the defendant to charge certain requests and I am going to charge them, and they are these:

"1. That if the delay was due to a strike which was an excepted cause in certain of the bills of lading introduced in evidence, and if no negligence on the defendant's part was shown, then the defendant is not liable as to those shipments, and the burden of proving such negligence is on the plaintiff.

"2. That if the delay was due to any cause beyond the defendant's control and therefore within the exception in certain of the bills of lading introduced in evidence, if no negligence of the defendant was shown, then the defendant is not liable as to those shipments, and the burden of proving such negligence is on the plaintiff."

You will have observed from what I have already read and from what I read later that many of these are things that I have already told you, but I go over them for abundant caution in getting the rules accurately before you.

"3. That the strike was a matter beyond the control of the defendant and therefore an excepted cause in certain of the bills of lading introduced in evidence. If reasonable care was exercised to relieve the situation the defendant is not liable as to those shipments.

"4. That if the delay complained of was occasioned by accumulation of freight at any point and therefore within the exception in certain of the bills of lading introduced in evidence, and if no negligence of the defendant was shown, then the defendant was not liable as to those shipments, and the burden of proving such negligence is upon the plaintiff.

"5. Negligence is not to be presumed against the defend-
192 ant but must be proved affirmatively, and the plaintiff has the burden of so proving it.

"6. That if no claim was filed with the defendant at the point of delivery for loss or damage to the watermelons shipped under bills of lading marked in evidence within ten days or thirty days or four months respectively, as the case may be, from the date of arrival, then the defendant is not liable as to these shipments respectively, and the burden of proving that the claims were filed within that time is on the plaintiff."

That rule which I have just charged you undoubtedly states the law, and it is to be taken in connection with the matter that I have already stated to you with respect to the waiver of the filing of those claims, that is to the voluntary relinquishment by the defendant of its right to insist that those claims shall be filed in writing within the time specified. If the plaintiff has made out that waiver—and the burden rests upon the plaintiff in the cases where this rule is applicable to make it out by the greater weight of the evidence—why then that waiver on the part of the defendant does away with the necessity of filing the claim within the time specified and will not defeat the right of the plaintiff to recover. If the plaintiff has not made out any waiver of it, why then manifestly the defendant in those cases would be entitled to prevail, because by the stipulations admittedly those claims were not filed in writing in certain of the

cases. And I might say on this point that you will find in the statement in writing prepared by the defendant for your use to facilitate your labors the cases indicated in which the defendants claim those claims in writing were not filed.

I am requested to charge:

"7. That the burden is on the plaintiff to show that the
193 decay and damage to the watermelons would not have resulted if the defendant had not failed to exercise reasonable care to avoid such result upon the occurrence of the excepted causes in the bills of lading marked in evidence respectively.

"8. The shipments involved in this action are interstate shipments and are governed solely by the acts of Congress of the United States commonly designated as the interstate commerce acts."

The 9th I refuse to charge.

"10. The interstate commerce acts of Congress supercede all state regulations, policies and rules governing interstate shipments and bring all interstate shipments under the uniform rules provided in the acts of Congress.

"11. All the rights to which the initial carrier is entitled under the bills of lading marked in evidence inure to the benefit of the connecting or terminal carrier, the defendant in this action.

"12. If the delay which caused the decay and damage of the watermelons was due to the excepted cause or causes respectively in the bills of lading marked in evidence, then the burden is upon the plaintiff to show that such delay could have been avoided by the defendant by the exercise of reasonable care, and the burden is on the plaintiff to show affirmatively that the damage was the result of the negligence of the defendant.

"13. The defendant proved a cause beyond its control, a strike, an accumulation of freight at a point affecting all of the shipments involved in these suits, which brings the delay causing the damage within the excepted causes in the bills of lading respectively, and it was incumbent upon the plaintiff at that point in the case to show negligence on the part of the defendant, and the burden
194 of proof was upon the plaintiff to establish such negligence without further proof by the defendant."

Now you will observe that I said that the defendant did prove a cause beyond its control, a strike. I have no doubt in this case, gentlemen, that what actually happened over in New York was a strike, and I have no doubt that that strike was at the time it was in existence beyond the control of this defendant and that this defendant was not responsible for the acts of these strikers. The contention of the plaintiff as I understand it is not that there was no strike or that the defendants could have then and there ended that strike. The contention of the plaintiff is that the defendant did not use that reasonable care which it should have used with respect to the particular shipments in these cases and that its neglect to use that care was the proximate cause of the injury and therefore entitled the plaintiff to recover. But as I say, there is no doubt that this was a strike and that such strike does not render the defendant liable for its result unless the defendant was negligent, unless it

did not use reasonable care in the forwarding and the delivery of this freight, these watermelons. Now as bearing upon that question of a strike, and the law with respect to that, there seems to me to be no manner of doubt either in reason or on the cases. These men who went out on strike were some of them the employees of this defendant and there were disorderly disturbances and there were arrests, as the evidence here shows, and there was some intimidation and some coercion. Now as to a situation like that and the responsibility of the defendant for it the New York Court of Appeals has used this language:

"It is true that these men had been in the employment of
195 the defendant but they left and abandoned that employment. They ceased to be in its service or in any sense its agents for whose conduct it was responsible. They not only refused to obey its orders or to render it any service but they wilfully arrayed themselves in positive hostility against it and intimidated and defeated the efforts of employees who were willing to serve it. They became a mob to be dealt with by the government, whose duty it was by the use of adequate force to enforce proper respect for private property and private rights and obedience to law. If they had burned down bridges, torn up tracks or gone into passenger cars and assaulted passengers upon what principle could it be held that as to such acts they were the employees of the defendant for whom it was responsible? If they had sued the defendant for wages for the eleven days when they were thus engaged in blocking its business no one will claim that they could have recovered."

That states the obvious rule of sense and of law; and that is not a question that is in serious dispute in this case, as to whether what actually happened over there, with the accompanying violence, was a strike. The question is whether or not in the light of what occurred over there the defendant in this case has been shown by the greater weight of the evidence to have been negligent in the forwarding and the delivery of this freight. If it has been, why these plaintiffs are entitled to recover and to have you assess their damages, unless some of these other defenses have been made out by the greater weight of the evidence. If the defendant has not been shown to have been negligent in the particular indicated, why then manifestly the defendant is not responsible and the verdict in all
196 the cases where these rules apply would have to be for the defendant.

Now those are requests that I have been asked to charge, and I charge you that they do accurately state the law and that they are to guide you in the determining of the case. The fourteenth request I am refusing to read for reasons which I will state to counsel when the time comes.

Now, gentlemen, those are the rules which will guide you in determining whether or not there is liability in this case. If you find liability, then, and only then, you come to the question of the assessment of damages. In order to facilitate you in determining that question you have those papers with the figures on them. Now there are only one or two things that I desire to say about that

matter if you find in favor of the plaintiff. The plaintiff is entitled in the case as a measure of damages to have you allow the value of the goods at the time and place of shipment plus the freight on the goods and plus interest for two years and seven months. The plaintiff has figuerd that out on the paper that he has furnished you, and which the eighth juror has, and in whatever cases the plaintiff is entitled to recover, where the defendant has not shown that these claims were not filed within the time limited in the bills of lading, and the plaintiff has not shown that there was a waiver of the right to have those filed within time—I say that wherever there has been no showing of a waiver there you would have to find for the defendant, but where there has been a showing of a waiver under the rules that I have given you there you would find in favor of the plaintiff and assess the plaintiff's damages at the value at the time and place of shipment plus the freight plus interest at six per cent. for two years and seven months. Those figures
197 you have. In all the cases where you find that the defendant has made out by the greater weight of the evidence that there was a neglect to file these claims within the times limited—and that is made out in all the cases by stipulation—and where you do not find that the plaintiff has overcome that defense of not filing those claims within time by showing a waiver of it under the rules I have given you, there you find in favor of the defendant with respect to those claims.

Now that, gentlemen, I think, is all that you need to know to enable you to correctly find a verdict in these cases. You will find out that on the defendant's paper he does not charge the freight in. On the plaintiff's paper the freight is charged in. On that issue you will remember I have told you that in all cases where under the rules that I have given you the plaintiff is entitled to a verdict you add the freight in, because I think the law is perfectly settled that the freight in a case of this kind is to be added and that any stipulation which attempted to keep it out would be an invalid stipulation in the law.

You will take the case under these rules now and decide it.

Mr. Hartpence: I would like to except to your Honor's refusal to charge requests 9 and 14.

The Court: All right. Now with respect to request 9, that request reads as follows:

"That the defendant was not bound to carry or transport the watermelons by any particular train, nor within any particular time, nor in time for any particular market, nor otherwise than with reasonable despatch——" If the request ended there I would have charged it, and did charge it, and more than that; but the request continues as follows: —"with reference to other business of the defendant as its general business permitted."

198 The reason I did not charge that request was because there may have been a lack of despatch and a lack of reasonable care with respect to the other business, and therefore the lack of care in the management of its general business would have been attrib-

utable in the case of the particular shipment, and consequently this does not accurately state the law and I refuse it on that account. I think I did state the law even more accurately than you asked it with respect to the general proposition involved.

With respect to request 14, that request reads as follows:

"14. That it was the duty of the defendant to move most perishable fruit first under the circumstances in these cases, and the holding back of less perishable fruit, viz., the watermelons, until the peaches had been delivered, was not negligence."

That requests me first of all to find a fact, which I am not permitted under our system of jurisprudence to do. Furthermore, it is for the jury to say whether reasonable care and diligence required the matters suggested; and nextly, that the time of the receipt of the various shipments has to be considered. You will see that matter thoroughly treated in Keeney vs. R. R., 59 Barbour, 104; and furthermore the requirement of the law is that the carrier shall make the best practicable use of its means and facilities; and whether he did or not is for the jury to say and not for me. That you will find laid down in 10 Ky. L. R. 1020, 23 S. W. 323, and Fed. Rep. 2 McCrary, 48, also reported in 4 Fed. 206. In other words I am taking from the jury by this request, if I should charge it, a congeries of facts and I am deciding that those facts do not amount to negligence,
199 whereas the determination of that question in the light of all the evidence rests with the jury and not with me at all. For that reason I refuse to charge it. And furthermore I have charged the general proposition involved in that in the other parts of my charge by indicating that they may take perishable freight first, and I have gone as far as the law will permit me to go on that proposition.

Mr. Hartpence: Defendant also excepts to that portion of Your Honor's charge where you charged that in assessing damages the jury should add the freight.

The Court: Now I charged that particularly because a stipulation is invalid if it is so worded as to deny the shipper any recovery in case of loss for freight paid in addition to the value of the goods. That you will find in Shea vs. Minneapolis R. R. Co., 56 Minn. 228; in Horner vs. R. R., 70 Mo. App. 285. You will also find the rule laid down here in Pearse vs. Quebec S. S. Co., 24 Fed. 285 to be just as I stated it to the jury; so that I have no doubt about the correctness of that rule.

Mr. Hartpence: The only other exception we desire to make goes to what you have said on three different occasions in your charge—and I think I can make the omnibus objection to it——

The Court: Yes.

Mr. Hartpence (continuing): —with regard to the effect of a waiver of the stipulation requiring a claim to be filed within a specified time. In other words, we want to show that the stipulation is binding as it stands and that where Your Honor charged the jury that it might be waived through the failure——

The Court: What you want to claim is that there cannot be any waiver?

Car— Initial—Numer	Edgemoor— Received from P. B. & W. R. R.	Waverly Transfer— Arrived.	
A.C.L. 29854	Aug. 2— 6:45 PM.	Aug. 3— 7:30 AM.	Aug. 3
A.C.L. 19352	Aug. 2— 6:45 PM.	Aug. 3— 7:30 AM.	Aug. 3
A.C.L. 21144	July 31— 5:25 PM.	—	
A.C.L. 21779	Aug. 4— 8:00 PM.	—	
A.C.L. 21545	Aug. 11— 1:25 AM.	(Aug. 11— 9:50 AM. (Transf. to CRI&P.	Aug. 12 36
A.C.L. 16052	July 30— 2:50 AM.	—	
A.C.L. 29559	July 24— 2:45 AM.	July 24— 9:45 AM.	July 24
A.C.L. 38360	July 26— 1:55 AM.	July 26— 2:00 PM.	July 26
A.C.L. 16867	July 21—10:30 AM.	—	
A.C.L. 28146	Aug. 2— 6:45 PM.	Aug. 3— 7:30 AM.	Aug. 3
A.C.L. 30936	Aug. 5—12:05 AM.	Aug. 5—11:10 AM.	Aug. 5
A.C.L. 18409	July 26— 1:55 AM.	July 26— 2:00 PM.	July 26
A.C.L. 26948	July 28— 6:20 AM.	—	
A.C.L. 36403	July 31— 5:25 PM.	—	
A.C.L. 18793	Aug. 2— 3:00 AM.	—	
A.C.L. 16583	Aug. 2— 3:00 AM.	—	
A.C.L. 36969	Aug. 2— 6:45 PM.	Aug. 3— 7:30 AM.	Aug. 3
A.C.L. 34038	Aug. 2— 6:45 PM.	Aug. 3— 7:30 AM.	Aug. 3
A.C.L. 18381	July 26— 1:20 PM.	—	
A.C.L. 22559	Aug. 6—12:20 PM.	—	
A.C.L. 33742	Aug. 2— 6:45 PM.	Aug. 3— 7:30 AM.	Aug. 3
A.C.L. 35963	July 31— 5:25 PM.	—	
A.C.L. 27966	July 29—12:10 AM.	—	
A.C.L. 18461	July 28— 6:20 AM.	—	
A.C.L. 16760	July 26— 1:55 AM.	July 26— 2:00 PM.	July 26
A.C.L. 26627	July 24— 9:30 PM.	—	
A.C.L. 17020	July 24— 9:30 PM.	—	
A.C.L. 18858	July 26— 1:55 AM.	July 26— 2:00 PM.	July 26
A.C.L. 23313	July 28—12:30 AM.	July 28—11:55 AM.	July 28
A.C.L. 15790	July 26— 1:20 PM.	—	
A.C.L. 22718	Aug. 1— 6:05 AM.	—	
A.C.L. 36522	July 31— 5:25 PM.	—	
A.C.L. 29526	Aug. 4— 8:00 PM.	—	
S.A.L. 16115	Aug. 4— 8:00 PM.	—	
A.C.L. 21110	July 24— 2:45 AM.	July 24— 9:45 AM.	July 24
A.C.L. 18629	July 23— 3:05 AM.	—	
A.C.L. 16557	July 30— 5:33 PM.	—	
A.C.L. 32487	Aug. 2— 6:45 PM.	Aug. 3— 7:30 AM.	Aug. 3
A.C.L. 33455	July 22—12:05 AM.	—	
A.C.L. 30188	July 22—12:05 AM.	—	
A.C.L. 37496	Aug. 5— 5:00 PM.	—	
A.C.L. 26170	Aug. 2— 6:45 PM.	Aug. 3— 7:30 AM.	Aug. 3
A.C.L. 31831	July 31— 5:25 PM.	—	
A.C.L. 35810	Aug. 2— 6:45 PM.	Aug. 3— 7:30 AM.	Aug. 3
A.C.L. 21515	Aug. 3— 6:10 PM.	Aug. 4— 6:20 AM.	Aug. 4
A.C.L. 30666	Aug. 9— 1:20 AM.	—	
A.C.L. 36761	Aug. 2— 6:45 PM.	Aug. 3— 7:30 AM.	Aug. 3
A.C.L. 29298	Aug. 5— 5:00 PM.	—	
A.C.L. 27721	Aug. 5— 5:00 PM.	—	
A.C.L. 35669	Aug. 5— 5:00 PM.	—	
A.C.L. 30744	Aug. 5— 5:00 PM.	Aug. 6— 4:	
A.C.L. 29977	Aug. 5— 5:00 PM.	—	
A.C.L. 27651	Aug. 5— 5:00 PM.	—	
A.C.L. 27644	Aug. 8— 9:10 AM.	—	
A.C.L. 34196	Aug. 2— 6:45 PM.	Aug. 3— 7:30 AM.	Aug. 3
A.C.L. 34077	Aug. 4— 5:25 PM.	—	
A.C.L. 23786	Aug. 11—10:00 PM.	—	
A.C.L. 31578	July 30— 2:50 AM.	—	
A.C.L. 30374	July 23— 3:05 AM.	—	
A.C.L. 31652	Aug. 4— 8:00 PM.	—	
A.C.L. 30674	July 31— 5:25 PM.	—	

OLIVIT BROTHERS vs. PENNSYLVANIA R. R. CO. — 64 Counts — **Exhibit P-1.**

ransfer— Left.	Meadows— Arrived.	Meadows— Left.	Harsimus— Arrived.	Jersey City— 2nd. & Henderson— Ready for Del'v'y.	Remarks.
Aug. 3— 7:30 AM.	Aug. 3— 3:30 PM.	Aug. 6— 8:25 AM.	Aug. 6—11:25 AM.	Aug. 7—10:00 AM.	
Aug. 3— 7:30 AM.	Aug. 3— 3:30 PM.	Aug. 6—10:15 PM.	Aug. 7— 1:28 AM.	Aug. 9— 8:45 AM.	Diverted to Wallabout, Brooklyn, N. Y., Aug. 9th—by consignee.
——	Aug. 1— 6:15 AM.	Aug. 2—11:50 PM.	Aug. 3— 1:45 AM.	Aug. 6— 7:00 AM.	
——	Aug. 5— 6:00 AM.	Aug. 9— 6:10 PM.	Aug. 9— 9:05 PM.	Aug. 13— 9:10 AM.	Diverted to White Plains, N. Y., Aug. 13th—by consignee.
Aug. 12—11:35 PM.)	——	——	Aug. 13— 4:05 AM.	Aug. 14— 8:40 AM.	No stop at Meadows.
I&P. 36752)					
——	July 30— 1:30 PM.	Aug. 2— 5:40 AM.	Aug. 2— 7:40 AM.	Aug. 5— 7:00 AM.	
July 24—12:15 PM.	July 24— 1:50 PM.	July 26— 9:55 PM.	July 27— 2:40 AM.	July 29— 7:00 AM.	
July 26— 9:25 PM.	July 27— 1:25 AM.	July 29— 8:50 AM.	July 29—11:40 AM.	July 30— 7:00 AM.	
——	July 21— 7:25 PM.	July 24— 7:10 AM.	July 24—11:35 AM.	July 25—10:40 AM.	Diverted to Poughkeepsie, N. Y., July 25th—by consignee.
Aug. 3— 7:30 AM.	Aug. 3— 3:30 PM.	Aug. 6—10:15 PM.	Aug. 7— 1:28 AM.	Aug. 9— 7:00 AM.	
Aug. 5—11:30 AM.	Aug. 5—12:50 PM.	Aug. 9— 6:10 PM.	Aug. 9— 9:05 PM.	Aug. 12— 8:30 AM.	Trans. south of Edgemoor to S.A.L. 15989.
July 26— 9:25 PM.	July 27— 1:25 AM.	July 29— 8:50 AM.	July 29—11:40 AM.	July 29— 7:30 AM.	
——	July 28— 6:40 PM.	July 31—12:35 AM.	July 31— 1:30 AM.	July 31— 8:25 AM.	
——	Aug. 1— 6:15 AM.	Aug. 2—11:50 PM.	Aug. 3— 1:45 AM.	Aug. 6— 7:00 AM.	
——	Aug. 2— 1:35 PM.	Aug. 6— 8:25 AM.	Aug. 6—11:25 AM.	Aug. 8— 8:25 AM.	Diverted to Tarrytown, Conn., Aug. 8th—by consignee.
——	Aug. 2— 1:35 PM.	Aug. 6— 8:25 AM.	Aug. 6—11:25 AM.	Aug. 8— 8:25 AM.	Diverted to Waterbury, Conn., Aug. 9th—by consignee.
Aug. 3— 7:30 AM.	Aug. 3— 3:30 PM.	Aug. 6—10:15 PM.	Aug. 7— 1:28 AM.	Aug. 8—10:20 AM.	
Aug. 3— 7:30 AM.	Aug. 3— 3:30 PM.	Aug. 6—10:15 PM.	Aug. 7— 1:28 AM.	Aug. 8—10:10 AM.	
——	July 27— 2:20 AM.	July 31—12:35 AM.	July 31— 1:30 AM.	——	Diverted to New Haven, Conn., July 31st—by consignee.
——	(Aug. 7—12:35 AM.	Aug. 11— 5:25 PM.)	Aug. 11—11:20 PM.	Aug. 14— 8:40 AM.	
	(Trans. to C. of Ga. 2523.	)			
Aug. 3— 7:30 AM.	Aug. 3— 3:30 PM.	Aug. 6— 8:25 AM.	Aug. 6—11:25 AM.	Aug. 7—10:00 AM.	
——	Aug. 1— 6:15 AM.	Aug. 2—11:50 PM.	Aug. 3— 1:45 AM.	Aug. 5— 8:30 AM.	Diverted to Perth Amboy, N. J., Aug. 5th.—by consignee.
——	July 29—12:30 PM.	Aug. 2— 5:40 AM.	Aug. 2— 7:40 AM.	Aug. 3— 8:15 AM.	
——	July 28— 6:40 PM.	July 31—12:35 AM.	July 31— 1:30 AM.	Aug. 1— 8:30 AM.	Diverted to Newark, N. J., Aug. 1st.—by consignee.
July 26— 9:25 PM.	July 27— 1:25 AM.	July 29— 8:50 AM.	July 29—11:40 AM.	July 30— 7:00 AM.	Diverted to Bridgeport, Conn., July 30th.—by consignee.
——	July 25—10:10 AM.	July 28— 6:40 PM.	July 28— 7:55 PM.	July 29— 7:00 AM.	
——	July 25—10:10 AM.	July 28— 6:40 PM.	July 28— 7:55 PM.	July 30— 7:00 AM.	
July 26— 9:25 PM.	July 27— 1:25 AM.	July 29— 8:50 AM.	July 29—11:40 AM.	July 30— 7:00 AM.	
July 28— 1:00 PM.	July 28— 6:00 PM.	July 31—12:35 AM.	July 31— 1:30 AM.	Aug. 1— 8:30 AM.	Diverted to Wallabout, Brooklyn, N. Y., Aug. 1st—by consignee.
——	July 27— 2:20 AM.	July 29— 8:50 AM.	July 29—11:40 AM.	July 30— 7:00 AM.	
——	Aug. 1— 4:40 PM.	Aug. 5— 9:50 AM.	Aug. 5— 1:15 PM.	Aug. 6— 7:00 AM.	
——	Aug. 1— 6:15 AM.	Aug. 2—11:50 PM.	Aug. 3— 1:45 AM.	Aug. 5— 8:30 AM.	
——	Aug. 5— 6:00 AM.	Aug. 9— 6:10 PM.	Aug. 9— 9:05 PM.	Aug. 13— 9:25 AM.	Diverted to Wallabout, Brooklyn, N. Y., Aug. 14th.—by consignee.
——	Aug. 5— 6:00 AM.	Aug. 9— 8:05 AM.	Aug. 9— 9:25 AM.	Aug. 10— 7:40 AM.	
July 24—12:15 PM.	July 24— 1:50 PM.	July 25—10:00 AM.	July 25— 6:30 PM.	——	Diverted to Perth Ambboy, N. J., July 29th.—by consignee.
——	July 23— 3:45 PM.	July 26— 9:55 PM.	July 27— 2:40 AM.	July 29— 7:00 AM.	
——	July 31— 4:20 AM.	Aug. 2— 5:40 AM.	Aug. 2— 7:40 AM.	Aug. 3— 7:50 AM.	
Aug. 3— 7:30 AM.	Aug. 3— 3:30 PM.	Aug. 6—10:15 PM.	Aug. 7— 1:28 AM.	Aug. 8—10:10 AM.	
——	July 22— 7:00 AM.	July 25— 7:25 PM.	July 25— 8:00 PM.	July 26— 7:00 AM.	
——	July 22— 7:00 AM.	July 25— 7:25 PM.	July 25— 8:00 PM.	July 26— 7:00 AM.	
——	Aug. 5— 4:00 AM.	Aug. 9— 6:10 PM.	Aug. 9— 9:05 PM.	Aug. 12— 7:00 AM.	
Aug. 3— 7:30 AM.	Aug. 3— 3:30 PM.	Aug. 6— 8:25 AM.	Aug. 6—11:25 AM.	Aug. 7—10:05 AM.	
——	Aug. 1— 6:15 AM.	Aug. 2—11:50 PM.	Aug. 3— 1:45 AM.	Aug. 3— 8:30 AM.	
Aug. 3— 7:30 AM.	Aug. 3— 3:30 PM.	Aug. 6— 8:25 AM.	Aug. 6—11:25 AM.	Aug. 7—10:05 AM.	
Aug. 4— 7:20 AM.	Aug. 4—10:55 AM.	Aug. 9— 8:05 AM.	Aug. 9— 9:25 AM.	Aug. 12— 7:00 AM.	Trans. south of Edgemoor to A.C.L. 28009—diverted to Wallabout, Brooklyn, N. Y., Aug. 12th.—by consignee.
——	Aug. 9— 1:15 PM.	Aug. 11—11:45 PM.	Aug. 12— 2:45 AM.	Aug. 14— 9:35 AM.	
Aug. 3— 7:30 AM.	Aug. 3— 3:30 PM.	Aug. 6—10:15 PM.	Aug. 7— 1:20 AM.	——	Diverted to Wallabout, Brooklyn, N. Y., Aug. 7th.—by consignee.
——	Aug. 6— 4:00 AM.	Aug. 9— 6:10 PM.	Aug. 9— 9.05 PM.	Aug. 12— 7:00 AM.	
——	Aug. 6— 4:00 AM.	Aug. 9— 6:10 PM.	Aug. 9— 9.05 PM.	Aug. 12— 7:00 AM.	
——	Aug. 6— 4:00 AM.	Aug. 9— 6:10 PM.	Aug. 9— 9.05 PM.	Aug. 12— 7:00 AM.	
——	Aug. 6— 4:00 AM.	Aug. 9— 6:10 PM.	Aug. 9— 9.05 PM.	Aug. 12— 7:00 AM.	
——	Aug. 6— 4:00 AM.	Aug. 9— 6:10 PM.	Aug. 9— 9.05 PM.	Aug. 12— 7:00 AM.	
——	Aug. 6— 4:00 AM.	Aug. 9— 6:10 PM.	Aug. 9— 9.05 PM.	Aug. 12— 7:00 AM.	
——	Aug. 8— 5:30 PM.	Aug. 11—10:50 AM.	Aug. 11— 1:00 PM.	Aug. 13— 9:00 AM.	
Aug. 3— 7:30 AM.	Aug. 3— 3:30 PM.	Aug. 6— 8:25 AM.	Aug. 6—11:25 AM.	Aug. 7—10:10 AM.	
——	Aug. 5— 5:35 AM.	Aug. 6— 8:25 AM.	Aug. 6—11:25 AM.	Aug. 8— 8:20 AM.	
——	Aug. 12— 6:20 AM.	Aug. 12— 9:10 PM.	Aug. 13— 5:35 AM.	Aug. 15— 9:15 AM.	
——	July 30— 1:30 PM.	Aug. 2— 5:40 AM.	Aug. 2— 7:40 AM.	Aug. 3— 7:00 AM.	
——	July 23— 3:45 PM.	July 26— 9:55 PM.	July 27— 2:40 AM.	July 29— 7:00 AM.	
——	Aug. 5— 6:00 AM.	Aug. 9— 6:10 PM.	Aug. 9— 9:05 PM.	Aug. 10— 9:10 AM.	
——	Aug. 1— 6:15 AM.	Aug. 2—11:50 AM.	Aug. 3— 1:45 AM.	Aug. 5— 8:30 AM.	
——	Aug. 12— 6:20 AM.	Aug. 12— 9:10 PM.	Aug. 13— 5:35 AM.	Aug. 15— 9:15 AM.	
Aug. 3— 7:30 AM.	Aug. 3— 3:30 PM.	Aug. 6—10:15 PM.	Aug. 7— 1:28 AM.	Aug. 8—10:10 AM.	
					Trans. south of Edgemoor to S.A.L. 23093.

202

Mr. Hartpence: Yes; that is the point we make.

200 The Court: I just wanted to get that clearly on the record.

Mr. Hartpence: Yes; and where the Court charged that there could be a waiver in that respect we want an exception on the record.

The Court: In the case of the Peninsula Produce Exchange of Maryland vs. N. Y., P. & N. R. R. in 89 Atl. 437 the court distinctly and unanimously decide that there can be a waiver in that particular case.

Mr. Hartpence: I think also our statement of the calculation of damages might be added to the record for convenience.

The Court: I suppose there is no objection to that?

Mr. Stout: No.

201 PLAINTIFF'S EXHIBITS.

(Here follows Exhibit P-1, marked page 202.)

203 *Stipulation.*

New Jersey Supreme Court, Hudson County.

Action at Law. (64 Counts.)

OLIVIT BROTHERS, a Corporation, Plaintiff,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant.

It Is Hereby Stipulated by and between the parties hereto, that the following facts are admitted in evidence at the trial of this action, without formal proof, but without prejudice to either party to note objection thereto as irrelevant, immaterial or otherwise incompetent:—

1. During the months of July and August, 1912, and at the time of the bringing of this action, the defendant was a common carrier by railroad for hire from Edgemoor, Delaware, to Second and Henderson Streets, Jersey City, New Jersey.

2. The defendant received and accepted from the Philadelphia, Baltimore & Washington Railroad Company, a connecting carrier, at Edgemoor, Delaware, at the time shown on the chart hereto annexed, the cars of watermelons mentioned in the complaint herein, to be transported to Jersey City, New Jersey, in accordance with the bills of lading issued by the initial carriers, covering each of said shipments respectively.

3. The defendant transported by freight trains the said
204 cars from Edgemoor, Delaware, to Jersey City, and placed them on its delivery tracks at its delivery yard, Second and Henderson Streets, Jersey City, New Jersey, for delivery of the watermelons to the consignees in said bills of lading, at the time shown on the chart hereto annexed, respectively, except as therein otherwise noted.

4. The usual or customary time during the months of July and August, 1912, to transport by freight train, without delay in transportation, a car of watermelons over the defendant's railroad line from Edgemoor, Delaware, to its public delivery yard at Second and Henderson Streets, Jersey City, New Jersey, was about seven hours, under the most favorable circumstances.

5. Receipts or bills of lading were issued by the initial carriers for the transportation of the said cars of watermelons, and the plaintiff was at the time of the bringing of this action and still is the lawful holder of the said receipts or bills of lading.

6. The said receipts or bills of lading shall be offered and admitted in evidence.

7. The said watermelons were in apparent good order when received and accepted by the defendant at Edgemoor, Delaware, and were in a damaged condition when delivered by the defendant to the plaintiff at the defendant's delivery yard, Second and Henderson Streets, Jersey City, New Jersey.

Car— Initial & Number	Edgemoor— Received from P. B. & W. R. R.	Waverly Transfer— Arrived.	Left.
A.C.L. 25691	Aug. 1— 5:50 PM.	——	——
A.C.L. 38229	Aug. 2— 6:45 PM.	Aug. 3— 7:30 AM.	Aug. 3— 7:30 AM.
A.C.L. 20071	July 24— 2:45 AM.	July 24— 9:45 AM.	July 24—12:15 PM.
S.A.L. 24553	July 30— 2:50 AM.	——	——
S.A.L. 21998	Aug. 3—12:59 PM.	——	——
S.A.L. 21306	Aug. 5—12:05 AM.	Aug. 5—11:10 AM.	Aug. 5—11:30 AM.
S.A.L. 18311	July 29— 6:10 AM.	——	——
A.C.L. 27244	July 29— 6:10 AM.	——	——
S.A.L. 18300	Aug. 3—12:59 PM.	——	——
S.A.L. 17579	July 30— 2:50 AM.	——	——
S.A.L. 16346	July 22—11:35 AM.	——	——
S.A.L. 22790	July 30— 5:33 PM.	——	——
A.C.L. 24216	Aug. 2— 3:00 AM.	——	——

Exhibit P-2.

VIT BROTHERS vs. PENNSYLVANIA R. R. CO. 13 Counts.

Meadows— Arrived.	Meadows— Left.	Harsimus— Arrived.	Jersey City— 2nd. & Henderson— Ready for Del'v'y.	Remarks.
Aug. 2— 6:30 AM.	Aug. 5— 9:50 AM.	Aug. 5— 1:15 PM.	——	Diverted to Wallabout, Brooklyn, N. Y., Aug. 6—by consignee.
Aug. 3— 3:30 PM.	Aug. 6—10:15 PM.	Aug. 7— 1:28 AM.	——	Diverted to Wallabout, Brooklyn, N. Y., Aug. 7—by consignee.
July 24— 1:50 PM.	July 26— 9:55 PM.	July 27— 2:40 AM.	July 29— 7:00 AM.	
July 30— 1:30 PM.	Aug. 2— 5:40 AM.	Aug. 2— 7:40 AM.	Aug. 3— 8:15 AM.	
Aug. 4—12:05 AM.	Aug. 9— 8:05 AM.	Aug. 9— 9:25 AM.	Aug. 10— 7:30 AM.	
Aug. 5—12:50 PM.	Aug. 9— 6:15 PM.	Aug. 9— 9:05 PM.	Aug. 12— 8:45 AM.	
July 29— 3:50 PM.	Aug. 2— 5:40 AM.	Aug. 2— 7:40 AM.	Aug. 3— 7:50 AM.	
July 29— 3:50 PM.	Aug. 2— 5:40 AM.	Aug. 2— 7:40 AM.	Aug. 3— 7:50 AM.	
Aug. 4—12:30 AM.	Aug. 9— 8:05 AM.	Aug. 9— 9:25 AM.	Aug. 10— 7:30 AM.	
July 30— 1:30 PM.	Aug. 2— 5:30 AM.	Aug. 2— 7:40 AM.	Aug. 3— 8:15 AM.	
July 22—10:35 PM.	July 26— 3:30 PM.	July 26— 4:20 PM.	July 27— 7:00 AM.	
July 31— 4:20 AM.	Aug. 2— 5:40 AM.	Aug. 2— 7:40 AM.	Aug. 3— 7:50 AM.	
Aug. 2— 1:35 PM.	Aug. 6— 8:25 AM.	Aug. 6—11:25 AM.	Aug. 8— 8:20 AM.	

8. Claims for damages to the said watermelons were made in writing by the plaintiff to the defendant at the point of delivery within the time required by the said receipts or bills of lading.

9. The value of said watermelons at the place and time of shipment was $13,465.00 and the plaintiff sold them at the place of delivery for $8,895.00, which was the best price it could obtain for them owing to their damaged condition.

10. The plaintiff, on delivery to it by the defendant of the
205 said watermelons, paid to the defendant all the freight charges for transportation of same, amounting to $5,484.59.

11. All of said shipments were interstate shipments subject to the Carrier's Bill of Lading, at the regular or reduced rate specified in the rate tariffs filed with the Interstate Commerce Commission and subject also to Rule 1 of the Southern Classification filed with said commission pertaining to said shipments which said rule shall be offered and admitted in evidence.

QUEEN & STOUT,
Attorneys for Plaintiff.
VREDENBURGH, WALL & CAREY,
Attorneys of Defendant.

(Here follows Exhibit P-2, marked page 206.)

207 *Stipulation.*

New Jersey Supreme Court, Hudson County.

Action at Law (13 Counts).

OLIVIT BROTHERS, a Corporation, Plaintiff,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant.

It is hereby stipulated by and between the parties hereto, that the following facts are admitted in evidence at the trial of this action, without formal proof, but without prejudice to either party to note objection thereto as irrelevant, immaterial or otherwise incompetent:—

1. During the months of July and August, 1912, and at the time of the bringing of this action, the defendant was a common carrier by railroad for hire from Edgemoor, Delaware, to Second and Henderson Streets, Jersey City, New Jersey.

2. The defendant received and accepted from the Philadelphia, Baltimore & Washington Railroad Company, a connecting carrier, at Edgemoor, Delaware, at the time shown on the chart hereto annexed, the cars of watermelons mentioned in the complaint herein, to be transported to Jersey City, New Jersey, in accordance with the bills of lading issued by the initial carriers, covering each of said shipments respectively.

208 3. The defendant transported by freight trains the said cars from Edgemoor, Delaware, to Jersey City, and placed them on its delivery tracks at its delivery yard, Second and Henderson Streets, Jersey City, New Jersey, for delivery of the watermelons to the consignees in said bills of lading, at the time shown on the chart hereto annexed, respectively, except as therein otherwise noted.

4. The usual or customary time during the months of July and August, 1912, to transport by freight train, without delay in transportation, a car of watermelons over the defendant's railroad line from Edgemoor, Delaware, to its public delivery yard at Second and Henderson Streets, Jersey City, New Jersey, was about seven hours, under the most favorable circumstances.

5. Receipts or bills of lading were issued by the initial carriers for the transportation of the said cars of watermelons and the plaintiff was at the time of the bringing of this action and still is the lawful holder of the said receipts or bills of lading.

6. The said receipts or bills of lading shall be offered and admitted in evidence.

7. The said watermelons were in apparent good order when received and accepted by the defendant at Edgemoor, Delaware, and were in a damaged condition when delivered by the defendant to the plaintiff at the defendant's delivery yard, Second and Henderson Streets, Jersey City, New Jersey.

Car— Initial & Number	Edgemoor— Received from P. B. & W. R. R.	Waverly Transfer— Arrived.	Left.
S.A.L. 16082	July 19— 5:20 AM.	—	—
A.C.L. 34833	July 19— 8:10 AM.	—	—
S.A.L. 17566	July 22— 5:25 AM.	(July 22— 3:50 PM. Elizabeth	July 22— 3:50 PM.
A.C.L. 36210	July 21— 3:20 AM.	—	—
S.A.L. 18113	July 21— 3:30 AM.	—	—
A.C.L. 32619	Aug. 3— 6:10 PM.	Aug. 4— 6:20 AM.	Aug. 4— 7:20 AM.
S.A.L. 18267	Aug. 4— 5:25 PM.	—	—
A.C.L. 33493	Aug. 3— 6:10 PM.	Aug. 4— 6:20 AM.	Aug. 4— 7:20 AM.
A.C.L. 30276	Aug. 3— 6:10 PM.	Aug. 4— 6:20 AM.	Aug. 4— 7:20 AM.
A.C.L. 23150	Aug. 3— 6:10 PM.	Aug. 4— 6:20 AM.	Aug. 4— 7:20 AM.
A.C.L. 27576	Aug. 9— 6:55 PM.	—	—

OLIVIT BROTHERS vs. PENNSYLVANIA R. R. CO. — 11 Counts — **Exhibit P-3.**

Meadows— Arrived.	Meadows— Left.	Harsimus— Arrived.	Jersey City— 2nd. & Henderson— Ready for Del'v'y.	Remarks.
July 19— 3:15 PM.	July 22— 3:30 AM.	July 22— 4:30 AM.	July 24— 7:00 AM.	
July 19— 4:10 PM.	July 21— 9:30 PM.	July 21—11:55 PM.	July 23— 7:00 AM.	
July 22— 5:55 PM.	July 26— 3:30 PM.	July 26— 4:20 PM.	July 27— 7:00 AM.	
July 21— 3:10 PM.	July 24— 7:10 AM.	July 24—11:35 AM.	July 26— 7:00 AM.	Designated in complaint as A.C.L. 26210.
July 21— 3:10 PM.	July 24— 7:10 AM.	July 24—11:35 AM.	July 26— 7:00 AM.	
Aug. 4—10:55 AM.	Aug. 9— 8:05 AM.	Aug. 9— 9:25 AM.	Aug. 12— 7:00 AM.	
Aug. 5— 5:35 AM.	Aug. 6— 8:25 AM.	Aug. 6—11:25 AM.	Aug. 8— 8:20 AM.	
Aug. 4—10:55 AM.	Aug. 9— 8:05 AM.	Aug. 9— 9:25 AM.	Aug. 10— 8:50 AM.	
Aug. 4—10:55 AM.	Aug. 9— 8:05 AM.	Aug. 9— 9:25 AM.	Aug. 10— 8:45 AM.	
Aug. 4—10:55 AM.	Aug. 9— 8:05 AM.	Aug. 9— 9:25 AM.	Aug. 10— 8:50 AM.	
Aug. 10— 7:15 AM.	Aug. 11—11:45 PM.	Aug. 12— 2:45 AM.	Aug. 15— 9:15 AM.	

8. Claims for damage to the said watermelons were made in writing by the plaintiff to the defendant at the point of delivery within the time specified by the said receipts or bills of lading, except as to these shipments in which the Bills of Lading required claims to be filed within ten or thirty days.

9. The value of said watermelons at the place and time of shipment was $3,025.00 and the plaintiff sold them at the place of delivery for $2,080.00, which was the best price it could obtain for them owing to their damaged condition.

209 10. The plaintiffs, on delivery to it by the defendant of the said watermelons, paid to the defendant all the freight charges for transportation of same, amounting to $1,182.47.

11. All of said shipments were interstate shipments subject to the Carrier's Bill of Lading, at the regular or reduced rate specified in the rate tariffs filed with the Interstate Commerce Commission and subject also to Rule 1 of the Southern Classification filed with said commission pertaining to said shipments which said rule shall be offered and admitted in evidence.

QUEEN & STOUT,
Attorneys of Plaintiff.
VREDENBURGH, WALL & CAREY,
Attorneys of Defendant.

(Here follows Exhibt P-3, marked page 210.)

211 *Stipulation.*

New Jersey Supreme Court, Hudson County.

Action at Law (11 Counts).

OLIVIT BROTHERS, a Corporation, Plaintiff,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant.

It is hereby stipulated by and between the parties hereto, that the following facts are admitted in evidence at the trial of this action, without formal proof, but without prejudice to either party to note objection thereto as irrelevant, immaterial or otherwise incompetent:—

1. During the months of July and August, 1912, and at the time of the bringing of this action, the defendant was a common carrier by railroad for hire from Edgemoor, Delaware, to Second and Henderson Streets, Jersey City, New Jersey.

2. The defendant received and accepted from the Philadelphia, Baltimore & Washington Railroad Company, a connecting carrier, at Edgemoor, Delaware, at the time shown on the chart hereto annexed, the cars of watermelons mentioned in the complaint herein, to be transported to Jersey City, New Jersey, in accordance with the bills of lading issued by the initial carriers, covering each of said shipments respectively.

212 3. The defendant transported by freight trains the said cars from Edgemoor, Delaware, to Jersey City, and placed them on its delivery tracks at its delivery yard, Second and Henderson Streets, Jersey City, New Jersey, for delivery of the watermelons to the consignees in said bills of lading, at the time shown on the chart hereto annexed, respectively, except as therein otherwise noted.

4. The usual or customary time during the months of July and August, 1912, to transport by freight train, without delay in transportation, a car of watermelons over the defendant's railroad line from Edgemoor, Delaware, to its public delivery yard at Second and Henderson Streets, Jersey City, was about seven hours, under the most favorable circumstances.

5. Receipts or bills of lading were issued by the initial carriers for the transportation of the said cars of watermelons and the plaintiff was at the time of the bringing of this action and still is the lawful holder of the said receipts or bills of lading.

6. The said receipts or bills of lading shall be offered and admitted in evidence.

7. The said watermelons were in apparent good order when received and accepted by the defendant at Edgemoor, Delaware, and were in a damaged condition when delivered to the plaintiff at the defendant's delivery yard, Second and Henderson Streets, Jersey City, New Jersey.

OL

Car— Initial & Number	Edgemoor— Received from F. B. & W. R. R.	Waverly Transfer— Arrived.	Left.
A.C.L. 33226	July 28— 6:20 AM.	—	—
S.A.L. 22640	July 29— 6:10 AM.	—	—
A.C.L. 20752	Aug. 1— 6:05 AM.	—	—
A.C.L. 29638	Aug. 1— 3:00 AM.	—	—
A.C.L. 30833	Aug. 3— 6:10 PM.	Aug. 4— 6:20 AM.	Aug. 4— 7:20 AM.
A.C.L. 30957	Aug. 3— 6:10 PM.	Aug. 4— 6:20 AM.	Aug. 4— 7:20 AM.
S.A.L. 22585	Aug. 5— 5:00 PM.	—	—

OLIVIT BROTHERS vs. PENNSYLVANIA R. R. CO. 7 Counts **Exhibit P-4.**

Meadows— Arrived.	Meadows— Left.	Harsimus— Arrived.	Jersey City— 2nd. & Henderson— Ready for Del'v'y.	Remarks.
July 28— 6:40 PM.	July 31— 2:35 AM.	July 31— 1:30 AM.	July 31— 8:25 AM.	
July 29— 3:50 PM.	Aug. 2— 5:40 AM.	Aug. 2— 7:40 AM.	Aug. 3— 7:50 AM.	
Aug. 1— 4:40 PM.	Aug. 5— 9:50 AM.	Aug. 5— 1:15 PM.	Aug. 6— 7:00 AM.	Diverted to Newark, N. J., Aug. 6th—by consignee.
Aug. 2— 1:35 PM.	Aug. 2— 8:25 AM.	Aug. 6—11:25 AM.	Aug. 8— 8:25 AM.	Diverted to Trenton, N. J., Aug. 8th—by consignee.
Aug. 4—10:55 AM.	Aug. 9— 8:05 AM.	Aug. 9— 9:25 AM.	Aug. 10— 8:45 AM.	
Aug. 4—10:55 AM.	Aug. 9— 8:05 AM.	Aug. 9— 9:25 AM.	Aug. 12— 7:00 AM.	Diverted to Wallabout, Brooklyn, N. Y. Aug. 12th—by consignee.
Aug. 6— 4:00 AM.	Aug. 9— 6:10 PM.	Aug. 9— 9:05 AM.	Aug. 12— 7:00 AM.	

8. Claims for damage to the said watermelons were made in writing by the plaintiff to the defendant at the point of delivery within the time required by the said receipts or bills of lading, except as to those shipments in which the Bills of Lading required claims to be filed within ten or thirty days.

9. The value of said watermelons at the place and time of shipment was $2,375.00 and the plaintiff sold them at the place of delivery for $1,520.00, which was the best price it could obtain for them owing to their damaged condition.

213 10. The plaintiff, on delivery to it by the defendant of the said watermelons, paid to the defendant all the freight charges for transportation of same, amounting to $939.92.

11. All of said shipments were interstate shipments subject to the Carrier's Bill of Lading, at the regular or reduced rate specified in the rate tariffs filed with the Interstate Commerce Commission and subject also to Rule 1 of the Southern Classification filed with said commission pertaining to said shipments which said rule shall be offered and admitted in evidence.

QUEEN & STOUT,
Attorneys of Plaintiff.
VREDENBURGH, WALL & CAREY,
Attorneys of Defendant.

(Here follows Exhibit P-4, marked page 214.)

215 *Stipulation.*

New Jersey Supreme Court, Hudson County.

Action at Law (7 Counts).

OLIVIT BROTHERS, a Corporation, Plaintiff,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant.

It is hereby stipulated by and between the parties hereto, that the following facts are admitted in evidence at the trial of this action, without formal proof, but without prejudice to either party to note objection thereto as irrelevant, immaterial or otherwise incompetent:—

1. During the months of July and August, 1912, and at the time of the bringing of this action, the defendant was a common carrier by railroad for hire from Edgemoor, Delaware, to Second and Henderson Streets, Jersey City, New Jersey.

2. The defendant received and accepted from the Philadelphia, Baltimore & Washington Railroad Company, a connecting carrier, at Edgemoor, Delaware, at the time shown on the chart hereto annexed, the cars of watermelons mentioned in the complaint herein, to be transported to Jersey City, New Jersey, in accordance with the bills of lading issued by the initial carriers, covering each of said shipments, respectively.

3. The defendant transported by freight trains the said cars from Edgemoor, Delaware, to Jersey City, and placed them on its
216 delivery tracks at its delivery yard, Second and Henderson Streets, Jersey City, New Jersey, for delivery of the watermelons to the consignees in said bills of lading, at the time shown on the chart hereto annexed, respectively, except as therein noted.

4. The usual or customary time during the months of July and August, 1912, to transport by freight train, without delay in transportation, a car of watermelons over the defendant's railroad line from Edgemoor, Delaware, to its public delivery yard at Second and Henderson Streets, Jersey City, New Jersey, was about seven hours, under the most favorable circumstances.

5. Receipts or bills of lading were issued by the initial carriers for the transportation of the said cars of watermelons and the plaintiff was at the time of the bringing of this action and still is the lawful holder of the said receipts or bills of lading.

6. The said receipts or bills of lading shall be offered and admitted in evidence.

7. The said watermelons were in apparent good order when received and accepted by the defendant at Edgemoor, Delaware, and were in a damaged condition when delivered by the defendant to the plaintiff at the defendant's delivery yard, Second and Henderson Streets, Jersey City, New Jeresy.

8. Claims for damage to the said watermelons were made in writ-

AND

Car— Initial & Number	Edgemoor— Received from P. B. & W. R. R.	Waverly Transfer— Arrived.	Left.	
A.C.L. 30943	July 13—12:30 PM.	—	—	
A.C.L. 35449	July 13— 9:00 PM.	—	—	
A.C.L. 30698	July 17— 6:55 AM.	—	—	
A.C.L. 34794	July 16— 5:00 PM.	—	—	July
A.C.L. 24480	July 17— 6:55 AM.	—	—	
A.C.L. 23761	July 17— 3:50 PM.	—	—	July
A.C.L. 18316	July 17— 8:25 AM.	—	—	July
A.C.L. 25968	July 24— 5:15 AM.	—	—	July
A.C.L. 28548	July 24— 2:45 AM.	—	—	July
				July

ANDREW SPADA vs. PENNSYLVANIA R. R. CO. 9 Counts. **Exhibit P-5.**

Meadows— Arrived.	Left.	Harsimus— Arrived.	Jersey City— 2nd. & Henderson— Ready for Del'v'y.	Remarks.
——	——	July 13— 8:30 PM.	July 14— A.M.	
——	——	July 14— 3:50 AM.	July 17— A.M.	
July 17— 7:30 PM.	July 21— 9:30 PM.	July 21—11:55 PM.	July 23— A.M.	
——	——	July 17— 4:50 AM.	July 20— A.M.	
July 17— 7:30 PM.	July 21— 9:30 PM.	July 21—11:55 PM.	July 23— A.M.	
July 18— 3:20 AM.	July 19— 3:20 PM.	July 19— 3:36 PM.	July 22— A.M.	
July 17— 6:30 PM.	July 21— 9:30 PM.	July 21—11:55 PM.	July 23— A.M.	
July 24— 2:20 PM.	July 28— 6:40 PM.	July 28— 7:55 PM.	July 29— A.M.	
July 24— 2:20 PM.	July 28— 6:40 PM.	July 28— 7:55 PM.	July 31— A.M.	

ing by the plaintiff to the defendant at the point of delivery within the time specified by the said receipts or bills of lading, except as to these shipments in which the Bills of Lading required claims to be filed within ten or thirty days.

9. The value of said watermelons at the place and time of shipment was $1,500.00 and the plaintiff sold them at the place of delivery for $915.00, which was the best price it could obtain for them owing to their damaged condition.

217 10. The plaintiff, on delivery to it by the defendant of the said watermelons, paid to the defendant all the freight charges for transportation of same, amounting to $667.97.

11. All of said shipments were interstate shipments subject to the Carrier's Bill of Lading, at the regular or reduced rate specified in the rate tariffs filed with the Interstate Commerce Commission and subject also to Rule 1 of the Southern Classification filed with said commission pertaining to said shipments which said rule shall be offered and admitted in evidence.

QUEEN & STOUT,
Attorneys of Plaintiff.
VREDENBURGH, WALL & CAREY,
Attorneys of Defendant.

(Here follows Exhibit P-5, marked page 218.)

219 *Stipulation.*

Hudson County Circuit Court.

ANDREW SPADA and DOMINICK SPADA, Partners Doing Business as Andrew Spada & Co., Plaintiff,

vs.

THE PENNSYLVANIA RAILROAD COMPANY, Defendant.

Action at Law (9 Counts).

It is hereby stipulated by and between the parties hereto, that the following facts are admitted in evidence at the trial of this action, without formal proof, but without prejudice to either party to note objection thereto as irrelevant, immaterial or otherwise incompetent:—

1. During the month of July, 1912, and at the time of the bringing of this action, the defendant was a common carrier by railroad for hire from Edgemoor, Delaware, to Second and Henderson Streets, Jersey City, New Jersey.

2. The defendant received and accepted from the Philadelphia, Baltimore & Washington Railroad Company, a connecting carrier, at Edgemoor, Delaware, at the time shown on the chart hereto annexed, the nine cars of watermelons mentioned in the complaint herein, to be transported to Jersey City, New Jersey, in accordance with the bills of lading issued by the initial carriers, covering each of said shipments respectively.

3. The defendant transported by freight trains the said
220 cars from Edgemoor, Delaware, to Jersey City, and placed them on its delivery tracks at its delivery yard, Second and Henderson Streets, Jersey City, New Jersey, for delivery of the watermelons to the consignees in said bills of lading, at the time shown on the chart hereto annexed, respectively.

4. The usual or customary time during the month of July, 1912, to transport by freight train, without delay in transportation, a car of watermelons over the defendant's railroad line from Edgemoor, Delaware, to its public delivery yard at Second and Henderson Streets, Jersey City, New Jersey, was about seven hours, under the most favorable circumstances.

5. Receipts or bills of lading were issued by the initial carriers for the transportation of the said cars of watermelons all of which were interstate shipments subject to the Carrier's Bill of Lading, at the regular or reduced rate specified in the rate tariffs filed with the Interstate Commerce Commission and subject also to Rule 1 of the Southern Classification filed with said commission pertaining to said shipments which said rule shall be offered and admitted in evidence, and the plaintiffs were at the time of the bringing of this action and still are the lawful holders of the said receipts or bills of lading.

CH

Car— Initial & Number	Edgemoor— Received from P. B. & W. R. R.	Waverly Transfer— Arrived.	Left.
A.B.A. 20917	July 17— 6:55 AM.	—	—
Sou. 32937	July 24— 2:45 AM.	—	—
Sou. 25284	July 22—12:05 AM.	—	—
S.A.L. 24096	July 22—12:05 AM.	—	—
S.A.L. 23256	July 20— 8:35 PM.	—	—
S.A.L. 15841	July 21— 1:00 PM.	—	—
S.A.L. 22453	July 21— 1:00 PM.	—	—
Sou. 38162	July 21— 3:20 AM.	—	—
Sou. 35039	July 21— 3:20 AM.	—	—

CHARLES ALBRECHT vs. PENNSYLVANIA R. R. CO. 9 Counts. **Exhibit P-6.**

Meadows— Arrived.	Meadows— Left.	Harsimus— Arrived.	Jersey City— 2nd. & Henderson— Ready for Del'v'y.	Remarks.
July 17— 7:30 PM.	July 21— 9:30 PM.	July 21—11:55 PM.	July 23— 7:00 AM.	
July 24— 1:50 PM.	July 28— 6:40 PM.	July 28— 7:55 PM.	July 31— 7:00 AM.	
July 22— 7:00 AM.	July 25— 7:25 PM.	July 25— 8:00 PM.	July 27— 7:00 AM.	
July 22— 7:00 AM.	July 25— 7:25 PM.	July 25— 8:00 PM.	July 26— 7:00 AM.	
July 21—12:15 PM.	July 23— 6:55 AM.	July 23—11:30 AM.	July 25— 7:00 AM.	
July 21—10:30 PM.	July 25— 7:25 PM.	July 25— 8:00 PM.	July 27— 7:00 AM.	
July 21—10:30 PM.	July 24— 7:10 AM.	July 24—11:35 AM.	July 26— 7:00 AM.	
July 21— 3:10 PM.	July 24— 7:10 AM.	July 24—11:35 AM.	July 26— 7:00 AM.	
July 21— 3:10 PM.	July 24— 7:10 AM.	July 24—11:35 AM.	July 26— 7:00 AM.	

6. The said receipts or bills of lading shall be offered and admitted in evidence.

7. The said watermelons were in apparent good order when received and accepted by the defendant at Edgemoor, Delaware, and were in a damaged condition when delivery was tendered by the defendant to the plaintiff at the defendant's delivery yard, Second and Henderson Streets, Jersey City, New Jersey.

8. The plaintiffs accepted delivery of four of said cars of
221 watermelons, numbers, A. C. L. 30943, A. C. L. 34794, A. C. L. 23761 and A. C. L. 25968 and sold them for $680.53, which was the best price they could obtain for them owing to their damaged condition. The value of said four cars of watermelons at the place and time of shipment was $925.00.

9. The plaintiffs refused to accept delivery of five of said cars of watermelons, numbers, A. C. L. 35449, A. C. L. 30698, A. C. L. 24480, A. C. L. 18316 and A. C. L. 28548, when delivery was tendered by the defendant owing to their damaged condition and the defendant sold them for $206.80 after the plaintiffs refused to accept them. The value of said five cars of watermelons at the place and time of shipment was $1,125.00.

10. Claims for damage to the said watermelons were made in writing by the plaintiffs to the defendant at the point of delivery within the time required by the receipts or bills of lading, except as to those shipments in which the Bills of Lading require claims to be filed within ten or thirty days.

11. The amount of freight charges paid by the plaintiffs to the defendant on the delivery of the said four cars of watermelons which were accepted by the plaintiffs was $549.29.

QUEEN & STOUT,
Attorneys of Plaintiff.
VREDENBURGH, WALL & CAREY,
Attorneys of Defendant.

(Here follows Exhibit P-6, marked page 222.)

223 *Stipulation.*

Hudson County Circuit Court.

CHARLES ALBRECHT, Plaintiff,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant.

Action at Law (9 Counts).

It is hereby stipulated by and between the parties hereto, that the following facts are admitted in evidence at the trial of this action, without formal proof, but without prejudice to either party to note objection thereto as irrelevant, immaterial or otherwise incompetent:—

1. During the month of July, 1912, and at the time of the bringing of this action, the defendant was a common carrier by railroad for hire from Edgemoor, Delaware, to Second and Henderson Streets, Jersey City, New Jersey.

2. The defendant received and accepted from the Philadelphia, Baltimore & Washington Railroad Company, a connecting carrier, at Edgemoor, Delaware, at the time shown on the chart hereto annexed, the nine cars of watermelons mentioned in the complaint herein, to be transported to Jersey City, New Jersey, in accordance with the bills of lading issued by the initial carriers, covering each of said shipments, respectively.

3. The defendant transported by freight trains the said cars from Edgemoor, Delaware, to Jersey City, and placed them on its
224 delivery tracks at its delivery yard, Second and Henderson Streets, Jersey City, New Jersey, for delivery of the watermelons to the consignees in said bills of lading, at the time shown on the chart hereto annexed, respectively.

4. The usual or customary time during the month of July, 1912, to transport by freight train, without delay in transportation, a car of watermelons over the defendant's railroad line from Edgemoor, Delaware, to its public delivery yard at Second and Henderson Streets, Jersey City, New Jersey, was about seven hours, under the most favorable circumstances.

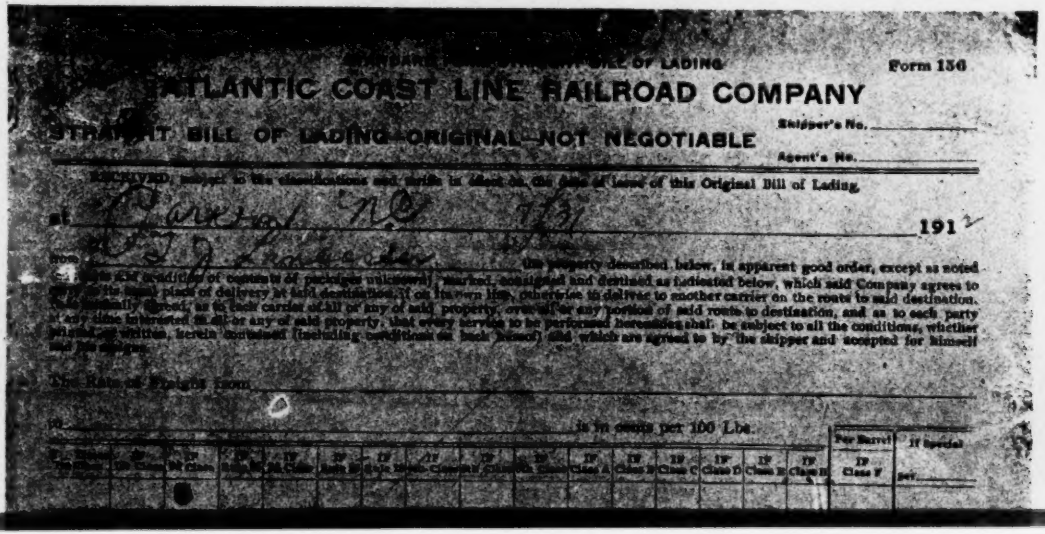
5. Receipts or bills of lading were issued by the initial carriers for the transportation of the said cars of watermelons all of which were interstate shipments subject to the Carrier's Bill of Lading, at the regular or reduced rate specified in the rate tariffs filed with the Interstate Commerce Commission and subject also to Rule 1 of the Southern Classification filed with said commission pertaining to said shipments which said rule shall be offered and admitted in evidence, and the plaintiff was at the time of the bringing of this action and still is the lawful holder of the said receipts or bills of lading.

6. The said receipts or bills of lading shall be offered and admitted in evidence.

Exhibit P—7

64 Bills of Lading, marked as one exhibit, covering the shipments in "64 Count Case," *Olivit Brothers* vs. *P. R. R.*,—

All of which are of the tenor following:



Form 156

ATLANTIC COAST LINE RAILROAD COMPANY

STRAIGHT BILL OF LADING—ORIGINAL—NOT NEGOTIABLE

Shipper's No.

Agent's No.

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading

at

191

from

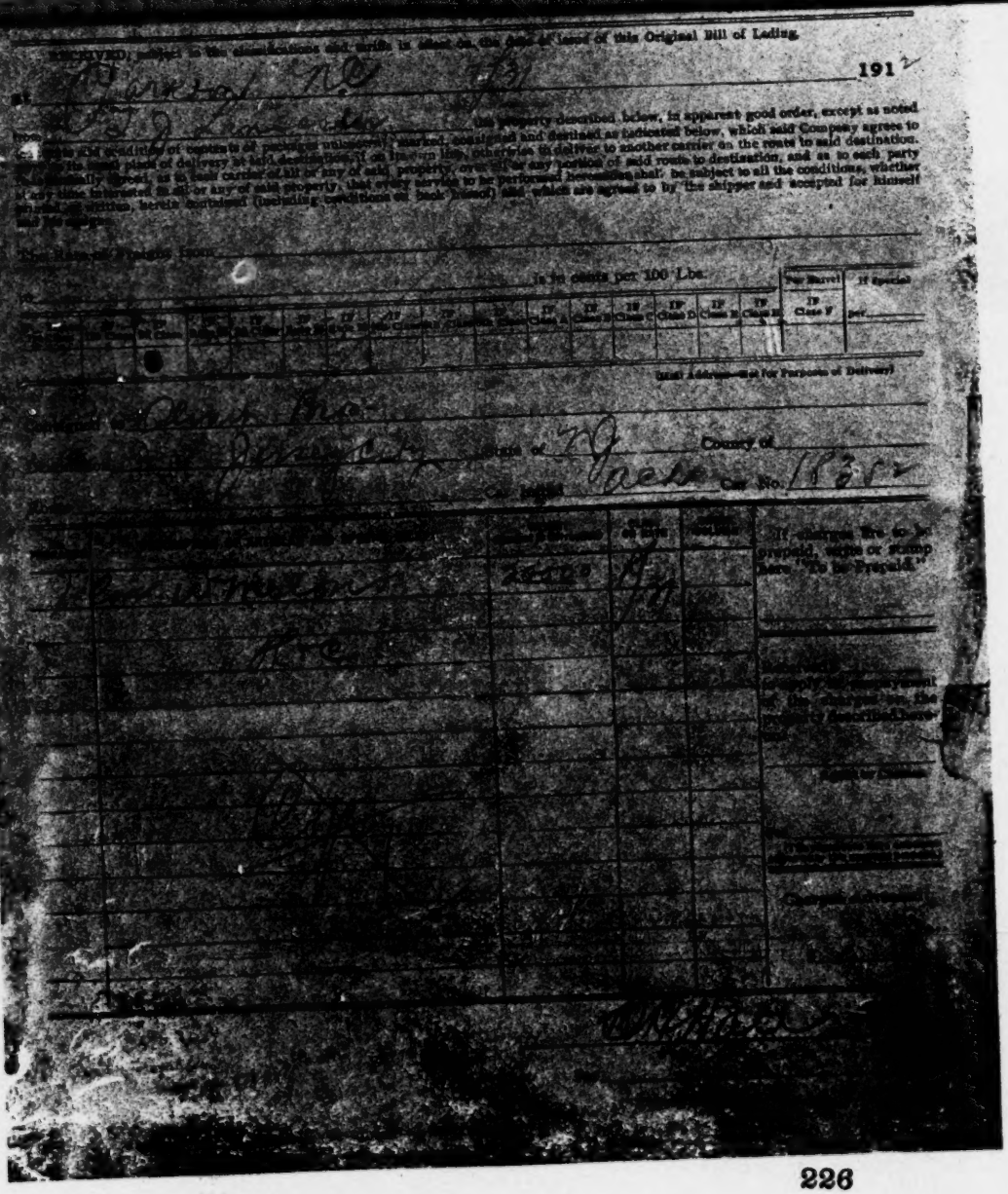
the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its own line, otherwise to deliver to another carrier on the route to said destination. It is agreed, as to each carrier of all or any of said property, over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The Rate of Freight from

to

is in cents per 100 Lbs.

No. Packages	Kind of Packages, Description of Articles, Special Marks, and Exceptions	Weight (Subject to Correction)	Class or Rate	Check Column	Per Barrel	If Special
					Class V	per



RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading,

at [illegible] 191[illegible]

from [illegible] the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to the said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is agreed that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

No. Packages | Description of Articles, Special Marks, and Exceptions | Weight (Subject to Correction) | Class or Rate | Check Column

Received $ [illegible] to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per [illegible]

(The signature here acknowledges only the amount prepaid.)

Charges Advanced: $

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Note—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding [illegible] per [illegible]

Agent or Cashier

Per [illegible]

Delivering Carrier

Car Initial [illegible] Car No. [illegible]

Shipper's Imprint

CONDITIONS.

Section 1. The carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto, except as hereinafter provided.

No carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, the authority of law, or the act or default of the shipper or owner, or for differences in the weights of grain, seed or other commodities caused by natural shrinkage or discrepancies in elevator weights. For loss, damage or delay, caused by fire occurring after forty-eight hours (exclusive of legal holidays), after notice of the arrival of the property at destination or at port of export (if intended for export) has been duly sent or given, the carrier's liability shall be that of warehouseman only. Except in case of negligence of the carrier or party in possession, the carrier or party in possession shall not be liable for loss, damage or delay occurring while the property is stopped and held in transit upon request of the shipper, owner or party entitled to make such request; or resulting from a defect or vice in the property, or from riots or strikes; or for country damage on cotton. When in accordance with general custom, on account of the nature of the property, or when at the request of the shipper the property is transported in open cars, the carrier or party in possession (except in case of loss or damage by fire, in which case the liability shall be the same as though the property had been carried in closed cars), shall be liable only for negligence.

In case of quarantine the goods may be discharged at risk and expense of owners into quarantine depot or elsewhere, as required by quarantine regulations or authorities, or for the carrier's dispatch, or at nearest available point in carrier's judgment, and in any such case carrier's responsibility shall cease when goods are so discharged, or goods may be returned by carrier at owner's expense and risk to shipping point, earning freight both ways. Quarantine expenses of whatever nature or kind upon or in respect to goods shall be borne by the owners of the goods or be a lien thereon. The carriers shall not be liable for loss or damage occasioned by fumigation or disinfection or other acts required by quarantine regulations or authorities, even though same may have been done by carrier's officers, crew, agents or employees, nor for detention, loss or damage of any kind occasioned by quarantine or the enforcement thereof.

Sec. 2. In issuing this bill of lading this company agrees to transport only over its own line, and, except as otherwise provided by law, acts only as agent with respect to the portion of the route beyond its own line.

No carrier shall be liable for loss, damage or injury not occurring on its own road or its portion of the through route, nor after said property has been delivered to the next carrier, except as such liability is or may be imposed by law.

Sec. 3. No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch, unless by specific agreement indorsed hereon. Every carrier shall have the right in case of physical necessity to forward said property by any railroad or route between the point of shipment and the point of destination; but if such diversion shall be from a rail to a water route the liability of the carrier shall be the same as though the entire carriage were by rail.

The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property (being the bona fide invoice price, if any, to the consignee, including the freight charges, if prepaid) at the place and time of shipment under this bill of lading, unless a lower value has been represented in writing by the shipper or has been agreed upon or is determined by the classification or tariffs upon which the rate is based, in any of which events such lower value shall be the maximum amount to govern such computation, whether or not such loss or damage occurs from negligence.

Claims for loss, damage or delay must be made in writing to the carrier at the point of delivery or at the point of origin within four months after delivery of the property, or, in case of failure to make delivery, then within four months after a reasonable time for delivery has elapsed. Unless claims are so made the carrier shall not be liable.

Any carrier or party liable on account of loss or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance.

Sec. 4. All property shall be subject to necessary cooperage and baling at owner's cost. Each carrier over whose route cotton is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded,) be there delivered and placed with other grain of the same kind and grade without respect to ownership, and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

Sec. 5. Property not removed by the party entitled to receive it within forty-eight hours (exclusive of legal holidays) after notice of its arrival has been duly sent or given, may be kept in car, depot or place of delivery of the carrier, or warehouse, subject to reasonable charge for storage and to carrier's responsibility as warehouseman only, or may be, at the option of the carrier, removed to and stored in a public or licensed warehouse at the cost of the owner and there held at the owner's risk and without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

The carrier may make a reasonable charge for the detention of any vessel or car, or for the use of tracks after the car has been held forty-eight hours (exclusive of legal holidays), for loading or unloading, and may add such charge to all other charges hereunder, and hold such property subject to a lien therefor. Nothing in this section shall be construed as lessening the time allowed by law or as setting aside any local rule affecting car service or storage.

Property destined to or taken from a station, wharf or landing at which there is no regularly appointed agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and when received from or delivered on private or other sidings, wharves or landings, shall be at owner's risk until the cars are attached to and after they are detached from trains, or until loaded into and after unloaded from vessels.

Sec. 6. No carrier will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classification or tariffs, unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

Sec. 7. Every party, whether principal or agent, shipping explosive or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

Sec. 8. The owner or consignee shall pay the freight, and average, if any, and all other lawful charges accruing on said property, and, if required, shall pay the same before delivery. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

Sec. 9. Except in case of diversion from rail to water route, which is provided for in Section 3 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent with such statutes or this section, and subject also to the condition that no such carrier or party in possession shall be liable for any loss or damage resulting from fire, or for any loss or damage resulting from the perils of the lakes, sea or other waters; or from wrecks, breakage, chafing, breakage of heat, frost, wet, explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery or appurtenances, whether existing prior to, at the time of, or after sailing; or unseaworthiness; or from collision, stranding or other accidents of navigation, or from prolongation of the voyage. And any vessel carrying any or all of the property herein described shall have the liberty to call at any ports or ports, to tow and be towed, to transfer, to tranship, to lighter, to load and discharge goods at any time, and assist vessels in distress, and to deviate for the purpose of saving life or property. Such water carrier shall not be responsible for any loss or damage to property if it be necessary or is usual to carry such property upon deck.

The term "water carriage" in this section shall not be construed as including lighterage across rivers or in lake or other harbors when performed by the rail carrier, and the liability for such lighterage shall be governed by the other sections of this instrument.

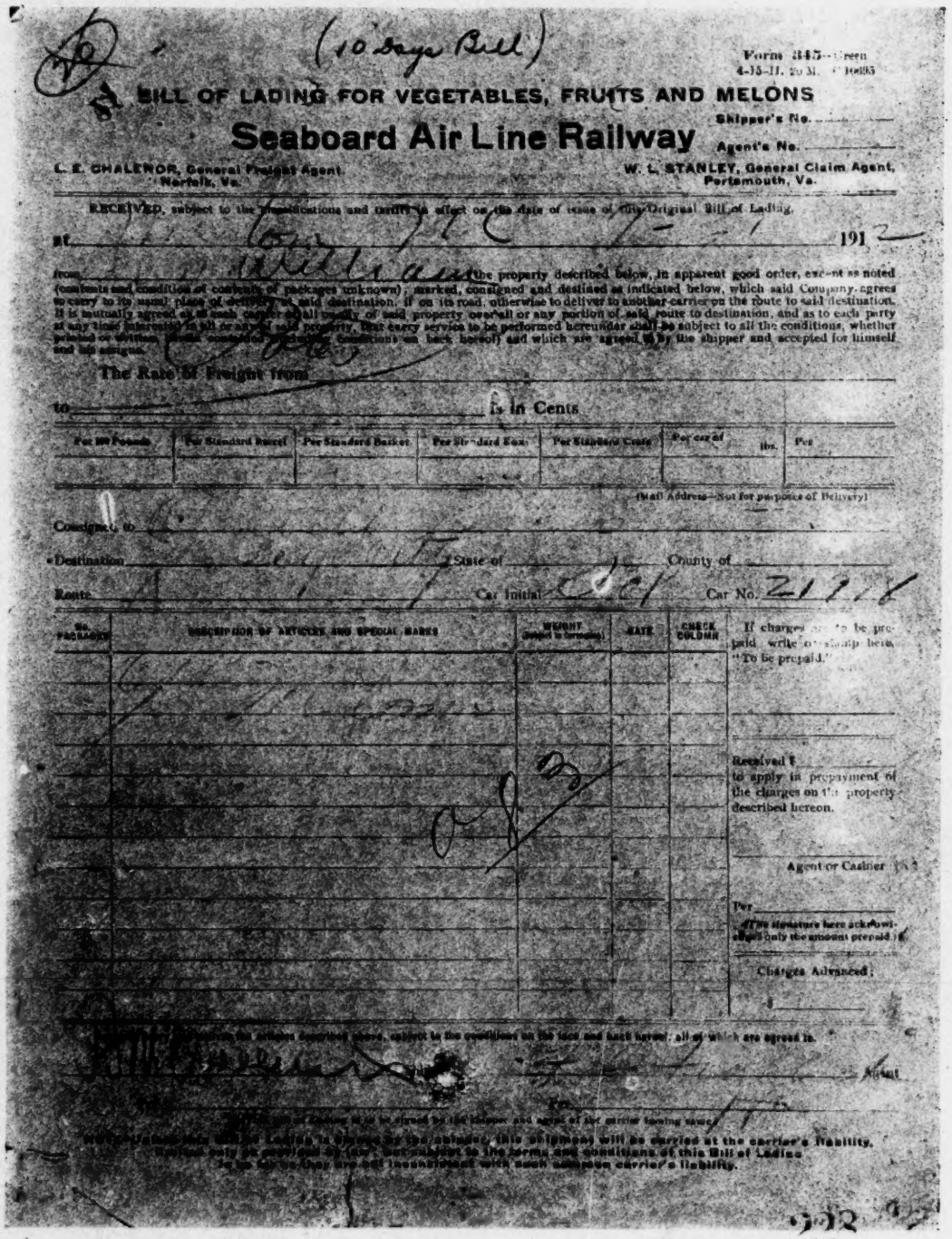
Section. 10. Any alteration, addition or erasure in this bill of lading which shall be made without an indorsement thereof hereon signed by the agent of the carrier issuing this bill of lading shall be without effect, and this bill of lading shall be enforceable according to its original tenor

Exhibit P—8

13 Bills of Lading, marked as one exhibit, covering the shipments in "13 Count Case," *Olivit* vs. *P. R. R.*,—

1 of which is of the same tenor as the bill in "64 Count Case," printed on pages 208-209; and

12 of which are of the tenor following:



(10 Days Bill)

Form 3445—Green
4-35-11. 20 M. 10985

BILL OF LADING FOR VEGETABLES, FRUITS AND MELONS

Shipper's No.

Seaboard Air Line Railway

Agent's No.

L. E. CHALENOR, General Freight Agent, Norfolk, Va.

W. L. STANLEY, General Claim Agent, Portsmouth, Va.

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading,

at 191

from the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained, including conditions on back hereof, and which are agreed to by the shipper and accepted for himself and his assigns.

The Rate of Freight from

to is in Cents

Per 100 Pounds	Per Standard Barrel	Per Standard Basket	Per Standard Box	Per Standard Crate	Per cwt of lbs.	Per

(Mail Address—Not for purpose of Delivery)

Consigned to

Destination State of County of

Route Car Initial Car No.

No. PACKAGES	DESCRIPTION OF ARTICLES AND SPECIAL MARKS	WEIGHT (Subject to Correction)	RATE	CHECK COLUMN

If charges are to be prepaid, write or stamp here, "To be prepaid."

Received $ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per

(The signature here acknowledges only the amount prepaid.)

Charges Advanced: $

Received, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading, the articles described above, subject to the conditions on the face and back hereof, all of which are agreed to.

Agent

For

Note—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

Note—Unless this Bill of Lading is signed by the shipper, this shipment will be carried at the carrier's liability. Rates are dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property. The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding per This shipment is to be carried subject to the terms and conditions of this Bill of Lading

CONDITIONS.

1 In consideration of the rate at which the freight is taken for carriage, and the special service to be performed, it is agreed by and between the carriers and the shipper, as owner or agent for owner, that the said freight is not to be carried and delivered for or with reference to any particular market or market hour at destination, nor in any special time, but only with such reasonable despatch with reference to other business of the carrier as the general business permits; that the carriers shall not be liable for any injury to, or decay of, fruits and vegetables, or other perishable freight, due to detention or delay occasioned by an accumulation of freight at any point, or to the breaking down of engine or cars, or to any other causes over which the carriers have no control; nor for damage or deterioration in value due to detention at any point, where such detention is due to or incurred at the request of the consignor, the consignee, or their agents or representatives.

2. It is agreed by the shipper, as owner or agent for owner, that in issuing this bill of lading through to destination, when such destination is on or over connecting lines, the initial carrier acts only as agent, and assumes no liability as principal as to the carriage of said freight beyond its own lines; and that the liability of said initial carrier in regard to the said freight shall terminate upon delivery thereof, in good order and within a reasonable time, to the next succeeding carrier. In case of loss or damage liability therefor shall be attached to only that carrier in whose custody the said freight was at such time of loss or damage.

3. No carrier shall be responsible for any loss or damage resulting directly or indirectly from change of route or destination made under the provisions of this contract. If any such change in route or destination shall be made, the shipper, owner or consignee shall pay, in addition to the rate named herein and the charges advanced, all expenses incurred thereby, including freights for transportation over lines and parts of lines not included in the route for which said rate is named

4. If all or any part of said property is carried by water, such water carriage shall be performed subject to statutory acts and to all conditions, whether printed or written, contained in this bill of lading, including the condition that no carrier by water shall be liable for any loss or damage resulting from explosion, accidents to boilers or machinery, or from any latent defects in hull, machinery or appurtenances existing before, at the time, or after shipment or sailing on the voyage, or unseaworthiness, provided the owners have exercised due diligence to make the vessel seaworthy; nor shall negligence be presumed against any carrier.

5. No carrier shall be liable for loss or damage arising from legal process, claims or ownership by third parties; want of proper cooperage, or insufficiency of packages in strength or otherwise, nor for the condition of packages or deficiency in contents thereof if receipted for by the consignees in good order; nor for wrong carriage or wrong delivery of goods imperfectly marked. All property shall be subject to necessary cooperage, boxing and repairs at owner's cost.

6. If any carrier transporting this shipment shall deem it necessary to dispose of same en route, or after delivery has been tendered to and refused by consignee, in order to protect the interest of the owner and the charges of transportation, said carrier is hereby empowered to act as the agent of the owner in the transaction, and will not be held responsible for more than net proceeds of sale, after deducting all legitimate expenses.

7. This bill of lading is signed for the different carriers who may engage in the transportation, severally but not jointly, each to be bound by and have the benefits of the provisions thereof; and in accepting this bill of lading the shipper, owner and consignee of the goods and the holder of the bill of lading agree to be bound by all of its stipulations, exceptions and conditions, whether printed or written.

8. Claims for loss or damage shall be made in writing to the agent at point of delivery promptly after arrival of the property, and if delayed for more than ten days after the delivery of the property, or after due time for the delivery thereof, no carrier hereunder shall be liable in any event.

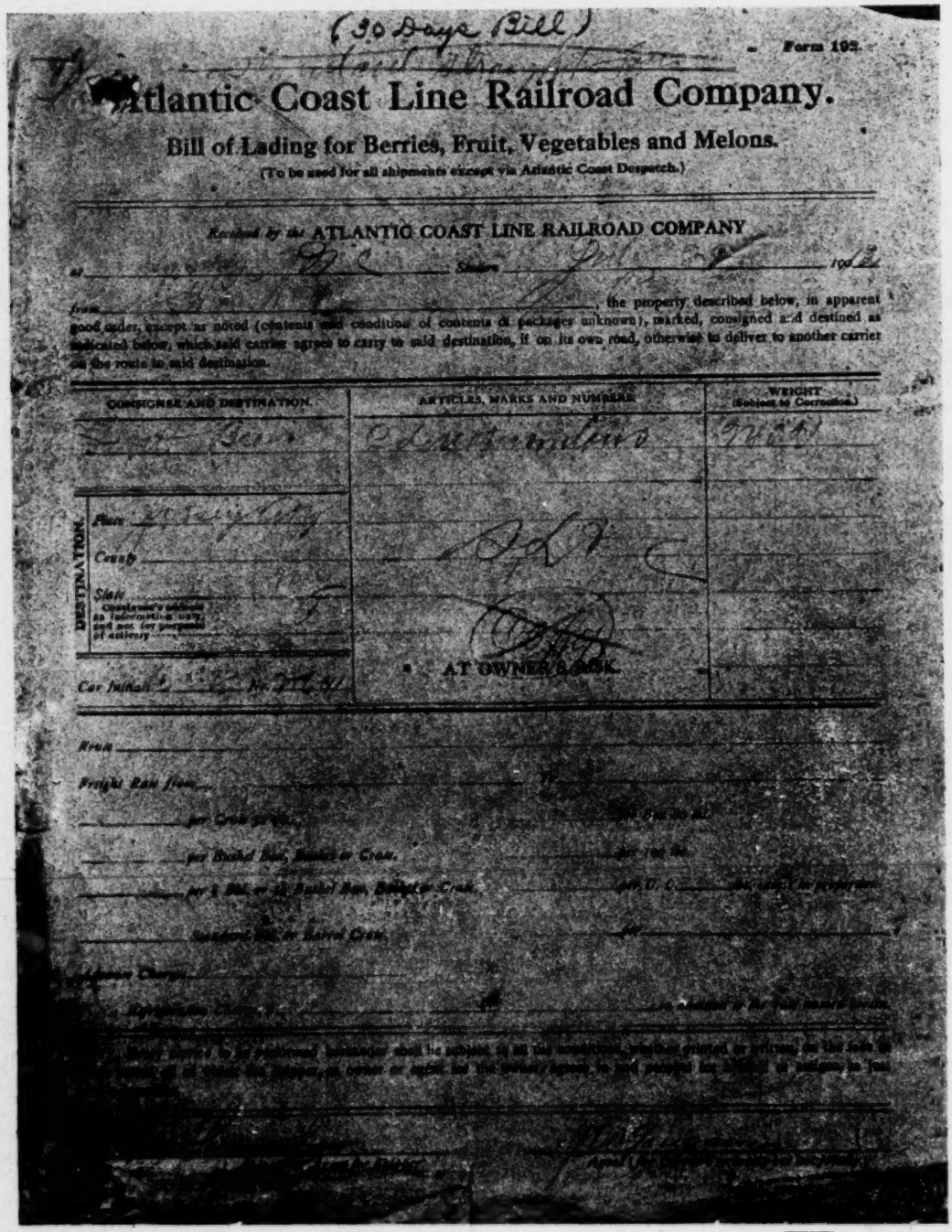
Exhibit P—9

11 Bills of Lading, marked as one exhibit, covering the shipments in "11 Count Case," *Olivit Bros. vs. P. R. R.*,—

4 of which are of the same tenor as the bill in "64 Counts Case," printed on pages 208-209;

3 of which are of the same tenor as the bill in "13 Counts Case," printed on pages 210-211; and

4 of which are of the tenor following:



(30 Days Bill)

Form 102

Atlantic Coast Line Railroad Company.

Bill of Lading for Berries, Fruit, Vegetables and Melons.

(To be used for all shipments except via Atlantic Coast Despatch.)

Received by the ATLANTIC COAST LINE RAILROAD COMPANY

at _____ Station _____ 190__

from _____, the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said carrier agrees to carry to said destination, if on its own road, otherwise to deliver to another carrier on the route to said destination.

CONSIGNEE AND DESTINATION.	ARTICLES, MARKS AND NUMBERS.	WEIGHT (Subject to Correction.)
DESTINATION. Post _____ County _____ State _____ Consignee's address, if information is only and not for purpose of delivery _____	AT OWNER'S RISK.	
Car Initial _____ No. _____		

From _____

Freight Rate from _____ To _____

_____ per Crate or Box.

_____ per Bushel Box, Basket or Crate.

_____ per ½ Bbl. or ½ Bushel Box, Basket or Crate.

_____ per Bbl. or Barrel Crate.

Advance Charges _____

Refrigeration Charges _____

Any alteration in this bill must be signed by the shipper or agent before the property is received for shipment.

Agent (or Cashier).

CONDITIONS

1. In consideration of the reduced rate at which the freight is taken for carriage, and the special service to be performed, it is agreed by and between the carriers and the shipper, as owner or agent for owner, that the said freight is not to be carried and delivered for or with reference to any particular market or market hour at destination, nor in any specified time, but only with such reasonable despatch with reference to other business of the carrier as the general business permits; that the carriers shall not be liable for any injury to, or decay of, fruits and vegetables, or other perishable freight, due to detention or delay occasioned by an accumulation of freight at any point, or to the breaking down of engine or cars, or to any other causes over which the carriers have no control; nor for damage or deterioration in value due to detention at any point, where such detention is due to or incurred at the request of the consignor, the consignee or their agents or representatives.

2. It is agreed by the shipper, as owner or agent for owner, that in issuing this bill of lading through to destination, when such destination is on or over connecting lines, the initial carrier acts only as agent, and assumes no liability as principal as to the carriage of said freight beyond its own lines; and that the liability of said initial carrier in regard to the said freight shall terminate upon delivery thereof, in good order and within a reasonable time to the next succeeding carrier. In case of loss or damage liability therefor shall be attached to only that carrier in whose custody the said freight was at such time of loss or damage.

3. No carrier shall be responsible for any loss or damage resulting directly or indirectly from change of route or destination made under the provisions of this contract. If any such change in route or destination shall be made, the shipper, owner or consignee shall pay, in addition to the rate named herein and the charges advanced, all expenses incurred thereby, including freights for transportation over lines and parts of lines not included in the route for which said rate is named.

4. If all or any part of said property is carried by water, such water carriage shall be performed subject to statutory acts and to all conditions, whether printed or written, contained in this bill of lading, including the condition that no carrier by water shall be liable for any loss or damage resulting from explosion, accidents to boilers or machinery, or from any latent defects in hull, machinery or appurtenances, existing before, at the time, or after shipment or sailing on the voyage, or unseaworthiness, provided the owners have exercised due diligence to make the vessel seaworthy; nor shall negligence be presumed against any carrier.

5. No carrier shall be liable for loss or damage arising from legal process, claims or ownership by third parties; want of proper cooperage, or insufficiency of packages in strength or otherwise, nor for the condition of packages or deficiency in contents thereof if receipted for by the consignee in good order; nor for wrong carriage or wrong delivery of goods imperfectly marked. All property shall be subject to necessary cooperage, boxing and repairs at owner's cost.

6. If any carrier transporting this shipment shall deem it necessary to dispose of same en route, or after delivery has been tendered to and refused by consignee, in order to protect the interest of the owner and the charges of transportation, said carrier is hereby empowered to act as the agent of the owner in the transaction, and will not be held responsible for more than net proceeds of sale, after deducting all legitimate expenses.

7. This bill of lading is signed for the different carriers who may engage in the transportation, severally but not jointly, each to be bound by, and have the benefits of, the provisions thereof; and in accepting this bill of lading the shipper, owner and consignee of the goods and the holder of the bill of lading agree to be bound by all of its stipulations, exceptions and conditions, whether printed or written.

8. Claims for loss or damage shall be made in writing to the agent at point of delivery promptly after arrival of the property, and if delayed for more than thirty days after the delivery of the property, or after due time for the delivery thereof, no carrier hereunder shall be liable in any event.

7. The said watermelons were in apparent good order when received and accepted by the defendant at Edgemoor, Delaware, and were in a damaged condition when delivery was tendered by the defendant to the plaintiff at the defendant's delivery yard, Second and Henderson Streets, Jersey City, New Jersey.

8. The plaintiff refused to accept delivery of said watermelons when tendered by the defendant owing to their damaged condition.

225 9. The defendant sold the said watermelons for $350.00 after the plaintiff refused to accept them.

10. Claims for damage to the said watermelons were made in writing by the plaintiff to the defendant at the point of delivery within the time required by the said receipts or bills of lading, except as to those shipments in which the Bills of Lading require claims to be filed within ten or thirty days.

11. The value of the said watermelons at the place and time of shipment was $1,375.00.

QUEEN & STOUT,
Attorneys of Plaintiff.
VREDENBURGH, WALL & CAREY,
Attorneys of Defendant.

(Here follow Exhibits P-7, P-8, and P-9, marked pages 226 to 231.)

232 EXHIBIT P-10.

7 Bills of Lading, marked as one exhibit, covering the shipments in "7 Count Case," Olivit Bros. vs. P. R. R.,—
4 of which are of the same tenor as the bill in "64 Count Case," printed on pages 208-209; and
3 of which are of the same tenor as the bill in "13 Count Case," printed on pages 210-211.

EXHIBIT P-11.

9 Bills of Lading, marked as one exhibit, covering the shipments in Spada vs. P. R. R.,—
4 of which are of the same tenor as the bill in "64 Count Case," Olivit Bros. vs. P. R. R., printed on pages 208-209; and
5 of which are of the same tenor as the bill in "13 Counts Case," Olivit Bros. vs. P. R. R., printed on pages 210-211.

EXHIBIT P-12.

9 Bills of Lading, marked as one exhibit, covering the shipments in Albrecht vs. P. R. R.,—
5 of which are of the same tenor as the bill in "64 Count Case," Olivit Bros. vs. P. R. R., printed on pages 208-209; and
4 of which are of the same tenor as the bill in "13 Count Case," Olivit Brothers vs. P. R. R., printed on pages 210-211.

233 EXHIBIT P-13.

New Jersey Supreme Court, Hudson County.

OLIVIT BROTHERS, a Corporation, Plaintiff,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant.

Action at Law. (13 Counts.)

Stipulation.

It is hereby stipulated by and between the parties hereto that the following facts are admitted in evidence at the trial of this action without formal proof:
1. Claims for damage to the said watermelons were made in writing on November 7th, 1912, by the plaintiff to the defendant at the point of delivery.
2. The letters hereto annexed show that said claims were refused or declined.

3. The said letters shall be offered and admitted in evidence.

QUEEN & STOUT,
Attorneys of Plaintiff.
VREDENBURGH, WALL & CAREY,
Attorneys of Defendant.

234 EXHIBIT P-14.

New Jersey Supreme Court, Hudson County.

OLIVIT BROTHERS, a Corporation, Plaintiff,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant.

Action at Law. (11 Counts.)

Stipulation.

It is hereby stipulated by and between the parties hereto that the following facts are admitted in evidence at the trial of this action without formal proof:

1. In respect to the third, fourth, fifth, eighth, ninth and tenth counts of said action, claims for damage to the said watermelons were made in writing on November 7th, 1912, by the plaintiff to the defendant at the point of delivery.

2. The numbers of the cars of the said watermelons for which the above claims were made, the value of the said watermelons at the place and time of shipment, the best price the plaintiff could obtain for the said watermelons owing to their damaged condition, the damage to the said watermelons based upon their value at the place and time of shipment and the freight paid by the plaintiff — the defendant on the delivery of the said watermelons are respectively as follows:

235

Car Nos.		Value.	Sold for	Damage to watermelons.	Freight.
S. A. L.	17566	$225.00	$135.00	$90.00	$77.50
A. C. L.	26210	225.00	135.00	60.00	93.62
S. A. L.	18113	250.00	135.00	100.00	82.46
A. C. L.	33493	200.00	135.00	65.00	87.68
A. C. L.	30276	200.00	135.00	65.00	80.32
A. C. L.	23150	200.00	135.00	65.00	81.28

3. The letters hereto annexed show that said claims were refused or declined.

4. The said letters shall be offered and admitted in evidence.

QUEEN & STOUT,
Attorneys of Plaintiff.
VREDENBURGH, WALL & CAREY,
Attorneys of Defendant.

236 EXHIBIT P-15.

New Jersey Supreme Court, Hudson County.

OLIVIT BROTHERS, a Corporation, Plaintiff,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant.

Action at Law. (7 Counts.)

Stipulation.

It is hereby stipulated by and between the parties hereto that the following facts are admitted in evidence at the trial of this action without formal proof:

1. In respect to the second, sixth and seventh counts of said action, claims for damage to the said watermelons were made in writing on November 7th, 1912, by the plaintiff to the defendant at the point of delivery.

2. The numbers of the cars of the said watermelons for which the above claims were made, the value of the said watermelons at the place and time of shipment, the best price the plaintiff could obtain for the said watermelons owing to their damaged condition, the damage to the said watermelons based upon their value at the place and time of shipment and the freight paid by the plaintiff to the defendant on the delivery of the said watermelons are respectively as follows:

237

Car Nos.		Value.	Sold for	Damage to watermelons.	Freight.
S. A. L.	22640	$175.00	$125.00	$50.00	$81.22
A. C. L.	30957	150.00	105.00	45.00	76.80
S. A. L.	22585	250.00	100.00	150.00	90.52

3. The letters hereto annexed show that said claims were refused or declined.

4. The said letters shall be offered and admitted in evidence.

QUEEN & STOUT,
Attorneys of Plaintiff.
VREDENBURGH, WALL & CAREY,
Attorneys of Defendant.

(*Letters Annexed to P-13, P-14 and P-15.*)

Pennsylvania Railroad Company.

Freight Station, Corner Henderson & Second Sts.

E. Butler, Freight Agent.

JERSEY CITY, Nov. 13, 1912.

Messrs. Olivit Bros., 335 Washington St., New York City.

GENTLEMEN: We beg to acknowledge receipt of the following claims:

	Our number.	Your number.	Our number.	Your number.
238	15-7	6665	15-43	6720
	15-8	6666	15-44	6719
	15-9	6760	15-45	6717
	15-10	6759	15-46	6716
	15-11	6758	15-47	6715
	15-12	6757	15-48	6714
	15-13	6756	15-49	6713
	15-14	6755	15-50	6712
	15-15	6754	15-51	6711
	15-16	6753	15-52	6710
	15-17	6752	15-53	6709
	15-18	6751	15-54	6708
	15-19	6750	15-55	6707
	15-20	6749	15-56	6705
	15-21	6748	15-57	6703
	15-22	6747	15-58	6700
	15-23	6746	15-59	6699
	15-24	6743	15-60	6698
	15-25	6742	15-61	6697
	15-26	6740	15-62	6696
	15-27	6739	15-63	6695
	15-28	6738	15-64	6694
	15-29	6737	15-65	6693
	15-30	6736	15-66	6692
	15-31	6735	15-67	6691
	15-32	6734	15-68	6690
	15-33	6733	15-69	6689
	15-34	6732	15-70	6687
	15-35	6731	15-71	6686
	15-36	6728	15-72	6685
	15-37	6727	15-73	6684
	15-38	6726	15-74	6683
	15-39	6725	15-75	6682
	15-40	6724	15-76	6681
	15-41	6723	15-77	6680
	15-42	6722	15-78	6679

239 Messrs. O. Bros. No. 2.

Our number.	Your number.
15-79	6678
15-80	6677
15-81	6676
15-82	6675
15-83	6674
15-84	6673
15-85	6672
15-86	6671
15-87	6670
15-88	6669
15-89	6668
15-90	6667
15-93	6704
15-94	6702
15-95	6718
15-96	6729

Yours truly,

E. BUTLER, *Agent.*

FR/WM

Pennsylvania Railroad Company.

Freight Station, Corner Henderson & Second Sts.

E. Butler, Freight Agent.

JERSEY CITY, Dec. 6, 1912.

Claims of Olivit Bros. for alleged damage to watermelons.

Messrs. Olivit Bros., 335 Washington St., New York City.

GENTLEMEN: We return herewith all papers supported by you in connection with the following claims, with advice to the effect that same cannot be entertained by us.

240 Our Freight Claim Department has investigated same and investigation has shown that there was no negligent delay in transit, no special time was guaranteed, and the only delay that resulted was from the extremely heavy movement of melons which brought about a congestion due to the receivers being unable to unload cars promptly upon their arrival and the following claims are therefore declined:

Our No.	R. L. F.	Your No.	Amount.
15-85	618830-G	6672	$100.00
15-89	832-G	6668	25.00
15-84	833-G	6673	25.00
15-86	834-G	6671	40.00
15-80	620113-E	6677	60.00
15-76	114-E	6681	110.00
15-70	786-F	6687	50.00
15-64	787-F	6694	40.00
15-63	839-G	6695	75.00
15-77	843-G	6680	65.00
15-66	902-H	6692	100.00
15-69	903-H	6689	50.00
15-58	904-H	6700	50.00
15-52	905-H	6710	100.00
15-57	907-H	6703	65.00
15-44	908-H	6719	75.00
15-43	909-H	6720	110.00
15-37	910-H	6727	85.00
15-48	911-H	6714	75.00
15-36	621030-J	6728	100.00

FR/WM

241 Messrs. O. Bros. No. 2.

Our No.	R. L. F.	Your No.	Amount.
15-33	621031-J	6733	$70.00
15-53	032-J	6709	125.00
15-61	033-J	6697	100.00
15-56	035-J	6705	100.00
15-13	621576-H	6756	140.00
15-19	577-H	6750	50.00
15-25	578-H	6742	115.00
15-21	579-H	6748	65.00
15-35	580-H	6731	80.00
15-51	581-H	6711	100.00
15-24	582-H	6743	115.00
15-46	583-H	6716	75.00
15-39	584-H	6725	40.00
15-10	622860-E	6759	60.00
15-17	862-E	6752	75.00
15-11	871-E	6758	70.00
15-28	872-E	6738	60.00
15-26	873-E	8740	50.00
15-27	874-E	6739	25.00
15-16	875-E	6753	60.00

Yours truly,

E. BUTLER, *Agent.*

FR/WM

Pennsylvania Railroad Company.

Freight Station, Corner Henderson & Second Sts.

E. Butler, Freight Agent.

JERSEY CITY, Dec. 23, 1912.

Claims of Olivit Bros. for alleged damage to watermelons.

Messrs. Olivit Bros., 335 Washington St., New York City.

GENTLEMEN: We return herewith all papers supported by
242 you in connection with the following claims, with advice to the effect that same cannot be entertained by us.

Our Freight Claim Department has investigated same and investigation has shown that there was no negligent delay in transit, no special time was guaranteed, and the only delay that resulted was from the extremely heavy movement of melons which brought about a congestion due to the receivers being unable to unload cars promptly upon their arrival, and the following claims are therefore declined:

R. L. F,	Our No.	Your No.	Amount.
618827-G	15-87	6670	$60.00
829-G	15-8	6666	100.00
831-G	15-81	6676	90.00
620906-H	15-38	6726	110.00
621623-I	15-40	6724	62.50
624-I	15-49	6713	50.00
625-I	15-15	6754	50.00
626-I	15-45	6717	60.00
627-I	15-50	6712	100.00
630-I	15-23	6746	65.00
632-I	15-41	6723	62.50
622138-G	15-34	6732	60.00
143-G	15-20	6749	30.00
145-G	15-31	6735	55.00
622861-E	15-29	6737	55.00

Yours truly,

E. BUTLER, *Agent.*

FR/WM

243 Pennsylvania Railroad Company.

Freight Station, Corner Henderson & Second Sts.

E. Butler, Freight Agent.

JERSEY CITY, N. J., Jan. 6, 1913.

Claims of Olivit Bros. for alleged damage to watermelons.

Messrs. Olivit Bros., 335 Washington St., New York City.

GENTLEMEN: We return herewith all papers supported by you in connection with the following claims, with the advice to the effect that same cannot be entertained by us.

Our Freight Claim Department has investigated same and investigation has shown that there was no negligent delay in transit, no special time was guaranteed, and the only delay that resulted was from the extremely heavy movement of melons which brought about a congestion, due to the receivers being unable to unload cars promptly upon their arrival, and the following claims are therefore declined:

R.L.F.	Our No.	Your No.	Amount.
618826-G	15-88	6669	$100.00
828-G	15-7	6665	75.00
620111-E	15-71	6686	95.00
115-E	15-82	6675	65.00
837-G	15-60	6698	75.00
838-G	15-54	6708	100.00
840-G	15-68	6690	60.00
846-G	15-62	6696	85.00
621549-G	15-47	6715	100.00
622863-E	15-9	6760	60.00
870-E	15-14	6755	85.00

Yours truly,

E. BUTLER, *Agent.*

FR/WM

244 Pennsylvania Railroad Company.

Freight Station, Corner Henderson & Second Sts.

E. Butler, Freight Agent.

JERSEY CITY, Jan. 30, 1913.

Subject: Claims of Olivit Bros., for alleged damage to watermelons.

Messrs. Olivit Bros., 335 Washington St., New York City.

GENTLEMEN: We return herewith all papers supported by you in

connection with the following claims, with advice to the effect that same cannot be entertained by us.

Our Freight Claim Department has investigated same and investigation has shown that there was no negligent delay in transit, no special time was guaranteed, and the only delay that resulted was from the extremely heavy movement of melons which brought about a congestion, due to the receivers being unable to unload cars promptly upon their arrival and the following claims are therefore declined:

245

Our No.	R.L.F.	Your No.	Amount.
15-83	618825-G	6674	$90.00
15-67	620112-E	6691	50.00
15-65	841-G	6693	100.00
15-74	844-G	6683	50.00
15-59	45-G	6699	50.00
15-42	621629-I	6722	40.00
15-22	31-I	6747	65.00
15-12	622136-G	6757	150.00
15-32	141-G	6734	40.00
15-30	142-G	6736	35.00
15-18	144-G	6751	80.00
15-96	641563-E	6729	75.00
15-95	64-E	6718	65.00
15-94	67-E	6702	110.00
15-93	68-E	6704	50.00

Yours truly,

E. BUTLER, *Agent.*

FR/WM

246 EXHIBIT P-16.

Hudson County Circuit Court.

ANDREW SPADA and DOMINICK SPADA, Partners, Doing Business as ANDREW SPADA & Co., Plaintiffs,

vs.

THE PENNSYLVANIA RAILROAD COMPANY, Defendant.

Action at Law.

Stipulation.

It is hereby stipulated by and between the parties hereto that the following facts are admitted in evidence at the trial of this action without formal proof:

1. In respect to the fourth, fifth, sixth, seventh and eighth counts of said action claims for damage to the said watermelons were made

in writing on July 31st, 1912, by the plaintiff to the defendant at the point of delivery.

2. The numbers of the cars of the said watermelons for which the above claims were made, the value of the said watermelons at the place and time of shipment, the best price the plaintiffs could obtain for the said watermelons owing to their damaged condition, the cars of said watermelons which were refused by the plaintiffs owing to their damaged condition, the damage to said watermelons based upon their value at the place and time of shipment and the freight paid by the plaintiff to the defendant on the delivery of the said watermelons are respectively as follows:

247

Car Nos.	Value.	Sold for	Damage to watermelons.	Freight.
A.C.L. 34794	$250.00	$165.53	$84.47	$121.55
A.C.L. 24480	200.00	refused	200.00	
A.C.L. 23761	200.00	165.00	35.00	136.98
A.C.L. 18316	200.00	refused	200.00	
A.C.L. 25968	175.00	125.00	50.00	156.62

3. The letters hereto annexed show that said claims were refused or declined.

4. The said letters shall be offered and admitted in evidence.

QUEEN & STOUT,
Attorneys of Plaintiffs.
VREDENBURG, WALL & CAREY,
Attorneys of Defendant.

248

The Pennsylvania Railroad Co.

General Office, Broad Street Station.

PHILADELPHIA, November 8th, 1912.

R. L. Franklin, Freight Claim Agent.
J. H. Baer, Asst. Freight Claim Agent.

35449—Claim 578865-F—Andrew Spada & Company, $220.30.
34794— " 578872-F— " $58.74.

Andrew Spada & Company, Fruit Auction Bldg., New York City.

GENTLEMEN: Returning herewith all papers presented by you in support of the above numbered claims against this company on various shipments of melons consigned to you at New York, I desire to state that there was no negligent delay to the shipments in question, inasmuch as no particular time or market is guaranteed. You will, therefore readily appreciate that we cannot give these claims favorable consideration.

Yours truly,

R. L. FRANKLIN,
Freight Claim Agent.
McI.

McI—k.
18—577

249 Pennsylvania Railroad Company.

Freight Station, Corner Henderson & Second Sts.

E. Butler, Freight Agent.

JERSEY CITY, Nov. 15, 1912.

Reg.	9745.	Reg	9743.
RLF	578868.	RLF	581614.
Reg.	9747.	Reg.	9910.
RLF	987873.	RLF	583395.

30943 Claim 578868-F—A. Spada & So., $125.00.
25968 Claim 578873-F—A. Spada & Co., $81.62.
24480 Claim 583395-N—A. Spada & Co., $50.00.
30698 Claim 581614-F—A. Spada & Co., $90.00.

Messrs. A. Spada & Co., 204 Franklin St., New York, N. Y.

GENTLEMEN: In further reference to the above mentioned claims entered by you for alleged loss account delay to melons, which arrived at this station during the melon season, beg to advise you that our Freight Claim Department, has investigated the movement of these various cars in question, and today, we are advised that there was no negligent delay in the transportation, no special time guaranteed by the carriers, and the only delay resulting from the extremely heavy movement of melons which brought about a congestion, due to the receivers being unable to unload cars as fast as they were received.

We are therefore, respectfully requested to decline payment of claims in question, and all papers supported by you in connection with these claims, are returned herewith.

Yours truly,

E. BUTLER, *Agent.*

250 The Pennsylvania Railroad Co.

General Office, Broad Street Station,

PHILADELPHIA, November 19th, 1912.

R. L. Franklin, Freight Claim Agent.
J. H. Baer, Asst. Freight Agent.

35449—Claim 578865-F—Andrew Spada & Company, $220.30.
34794— " 578872-F— " $58.74.

Andrew Spada & Company, 204 Franklin Street, New York City.

GENTLEMEN: Responding to your communication of the 11th instant touching the above claims and returning the documents en-

closed therewith, I wish to state the investigation which we have made in this case shows these cars were promptly transported from point of shipment to destination. We were unable, however, to promptly effect delivery owing to the large number of similar cars on hand which the consignees were not promptly unloading and releasing.

With this state of affairs we certainly cannot assume responsibility and I regret very much we cannot give favorable consideration to the claims.

Yours truly,

R. L. FRANKLIN,
Freight Claim Agent.

P.*K.

251 Pennsylvania Railroad Company.

Freight Station, Corner Henderson & Second Sts.

E. Butler, Freight Agent.

JERSEY CITY, Nov. 21, 1912

Reg. 9909.
RLF 583340.

Subject: Claim of Andrew Spada & Co., for $40.00.

Messrs. Andrew Spada & Co., Cor. Washington & Franklin Sts., New York, N. Y.

GENTLEMEN: In further reference to the above mentioned claim entered by you for alleged loss account delay to car A. C. L. 18316, from Cairo, Ga., July 13.

Our Freight Claim Department has investigated claim in question and to-day we are advised that as there was no negligent delay on the part of the carriers and as no particular time or market was guaranteed in the transportation of freight, and as there was no negligent delay on our part we are respectfully requested to decline payment of this claim in question.

The only delay that resulted was from the extremely heavy movement of melons which brought about a conjestion due to the receivers being unable to unload cars promptly upon arrival. All papers in connection with same *is* herewith returned, with advice that same is therefore declined.

Yours truly,

E. BUTLER, *Agent.*

F.R./WM.

252 Pennsylvania Railroad Company.

Freight Station, Corner Henderson & Second Sts.

E. Butler, Freight Agent.

JERSEY CITY, Nov. 27, 1912.

Claims of Andrew Spada & Co.

Reg. 9745—Claim 578868-F—for $125.00.
Reg. 9747—Claim 578873-F—for 81.62.
Reg. 9743—Claim 581614-F—for 90.00.
Reg. 9910—Claim 583395-N—for 50.00.

Messrs. Andrew Spada & Co., 204 Franklin St., New York, N. Y.

GENTLEMEN: In further reference to the above claims and your letter of Nov. 16, same was referred to our Freight Claim Department for further consideration. Today we are advised that our previous letter of Nov. 13 is final.

They state that they cannot see that your argument has changed the conditions to such an extent that we could render any different decision on these claims and as stated before the only delay was the result of the conjestion, and this was not caused by any negligence on our part and therefore cannot pass claim for payment.

We again return papers to you in support of same.

Yours truly,

E. BUTLER, *Agent.*

F.R./WM.

253 Pennsylvania Railroad Company.

Freight Station, Corner Henderson & Second Sts.

E. Butler, Freight Agent.

JERSEY CITY, Dec. 5, 1912.

Reg. 9911.
RLF 584272.

Subject: Claim of Andrew Spada & Co., for $24.48.

Messrs. Andrew Spada & Co., 204 Franklin St., New York, N. Y.

GENTLEMEN: In further reference to the above mentioned claim entered by you for alleged loss account delay to car A. C. L. 23761, from Cairo, Ga., July 13.

Beg to state our Freight Claim Department has investigated claim in question and today we are advised that they cannot entertain same as car moved within reasonable dispatch and there was no negligent

delay in transit and no special time was guaranteed for delivery. The only delay that resulted was from the extremely heavy movement of melons which brought about a congestion, as the receivers were unable to unload cars promptly upon their arrival and papers supported by you in connection with this claim are returned herewith, same being declined by our Freight Claim Department.

Yours truly,

E. BUTLER, *Agent.*

F.R./WM.

254 Pennsylvania Railroad Company.

Freight Station, Corner Henderson & Second Sts.

E. Butler, Freight Agent.

JERSEY CITY, Dec. 18, 1912.

Reg. 9748.
RLF 578630.

Subject: Claim of Andrew Spada & Co., for $65.00.

Messrs. Andrew Spada & Co., 204 Franklin St., New York City.

GENTLEMEN: In further reference to the above claim entered by you for loss to melons in car A. C. L. 28548, from Pine Park Ga., July 20.

Our Freight Claim Department has investigated claim. Our investigation has shown that there was no negligent delay in transit, no special time was guaranteed and the only delay that resulted in this case was due to the extremely heavy movement of melons which brought about a congestion, due to receivers being unable to unload cars promptly upon their arrival. All papers supported by you in connection with this claim are returned herewith, and claim being respectfully declined by our Freight Claim Department.

Yours truly,

E. BUTLER, *Agent.*

F.R./WM.

255 EXHIBIT P—17.

Hudson County Circuit Court.

CHARLES ALBRECHT, Plaintiff,

vs.

THE PENNSYLVANIA RAILROAD COMPANY, Defendant.

Action at Law.

Stipulation.

It is hereby stipulated by and between the parties hereto that the following facts are admitted in evidence at the trial of this action without formal proof;

1. In respect to the fourth, fifth, sixth and seventh counts of this action, claims for damage to the said watermelons were made in writing on September 6th, 1912, by the plaintiff to the defendant at the point of delivery.

2. The plaintiff refused to accept delivery of all of the cars of watermelons involved in this action owing to their damaged condition.

3. The numbers of the cars of said watermelons for which the above claims were made, the value of the said watermelons at the place and time of shipment and the damage to said watermelons based upon their value at the place and time of shipment are respectively as follows:

Car Nos.	Value.	Damage to watermelons.
S. A. L. 24096	$175.00	$175.00
S. A. L. 22453	150.00	150.00
S. A. L. 15841	125.00	125.00
S. A. L. 23256	150.00	150.00

256 4. The letters hereto annexed show that said claims were refused or declined.

5. The said letters shall be offered and admitted in evidence.

QUEEN & STOUT,
Attorneys of Plaintiff.
VREDENBURGH, WALL & CAREY,
Attorneys of Defendant.

257 The Pennsylvania Railroad Co.

General Office, Broad Street Station.

PHILADELPHIA, November 8th, 1912.

R. L. Franklin, Freight Claim Agent.
J. H. Baer, Ass't Freight Claim Agent.

Claim	589162-F—Chas.	Albrecht,	$85.00.
"	589163-F	"	85.00.
"	589164-F	"	72.50.
"	589165-F	"	80.00.
"	589166-F	"	110.00.
"	589167-F	"	112.50.

Mr. Chas. Albrecht, 110 Nostrand Avenue, bet. Park & Myrtle Aves., Brooklyn, N. Y.

DEAR SIR: Returning herewith all papers presented by you in support of the above numbered claims against this company on various shipments of melons consigned to you at New York, I desire to state that there was no negligent delay to the shipments in ques-

tion, inasmuch as no particular time or market is guaranteed. You will, therefore, readily appreciate that we cannot give these claims favorable consideration.

Yours truly,

R. L. FRANKLIN,
Freight Claim Agent.
McI.

McI.—k.

258 Pennsylvania Railroad Company.

Freight Station, Corner Henderson & Second Sts.

E. Butler, Freight Agent.

JERSEY CITY, Nov. 15, 1912.

Reg. 10126-RLF 589161-F—Claim-589161-F Chas. Albrecht, for $80.00.
Reg. 10201-RLF 590957-R—Claim-590957-R Charles Albrecht, for $120.00.

Mr. Chas. Albrecht, 110 Nostrand Ave., Brooklyn, N. Y.

DEAR SIR: In further reference to the above mentioned claims entered by you for alleged loss account of delay to cars SAL 24096, and Sou. 25284, beg to advise you that our Freight Claim Department has investigated claims in question, and to-day we are advised that they cannot consider claims whatsoever. The extreme heavy movement of melons about this season of the year brought about conjestions as the receivers were unable to accept them as fast as they were coming in. There was no negligence on the part of the carriers, and as no particular market or time was guaranteed, with this commodity we must respectfully decline to entertain claim in question, and all papers entered by you in support of same are returned herewith.

Yours truly,

E. BUTLER, *R. Agent.*

F. R./W. M.

259 Pennsylvania Railroad Company.

Freight Station, Corner Henderson & Second Sts.

E. Butler, Freight Agent.

JERSEY CITY, Dec. 5, 1912.

Reg. 10200.
R. L. F. 590958.
Subject: Claim of Charles Albrecht, for $120.00.

Mr. Charles Albrecht, 110 Nostrand Ave., Brooklyn, N. Y.

DEAR SIR: In further reference to the above mentioned claim entered by you for loss account delay to car Southern 32937, from Kline S. C., July 18.

Beg to state that our Freight Claim Department has investigated this claim in question and today we are in receipt of advice wherein they state that investigation shows that there was no negligent delay with the carriers. Car moved within reasonable dispatch, and no time was guaranteed in the delivery of shipment. The only delay that resulted was from the extremely heavy movement of melons which brought about a congestion, due to the receivers being unable to unload cars promptly upon their arrival, and all papers in support of same are respectfully returned herewith and claim is therefore declined.

Yours truly,

E. BUTLER, *R. Agent.*

F. R./W. M.

260 DEFENDANT'S EXHIBITS.

(Here follow maps marked pages 261 and 262.)

CHART

TOO

LARGE

FOR

FILMING

263 New Jersey Court of Errors and Appeals, June Term, 1915.

No. 68.

OLIVIT BROTHERS, a Corporation, Plaintiff and Respondent,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant and Appellant.

Submitted July 5, 1915. Decided January 28, 1916.

On Appeal from the Supreme Court.

For the appellant, Vredenburgh, Wall & Carey.
For the respondent, Queen & Stout.

Per Curiam:

The decision of this case (known as the 64 count case) is controlled by that in Carr vs. Pennsylvania Railroad Company, No. 118 of this present term.

The judgment below will be affirmed, with costs.

Endorsed: "Filed Jan. 28, 1916. Thomas F. Martin, Clerk."

264 State of New Jersey.

[Vignette.]

Department of State.

I, Thomas F. Martin, Secretary of State of the State of New Jersey, and ex-officio Clerk of the Court of Errors and Appeals in the last resort in all causes, do hereby Certify that the foregoing is a true copy of an opinion read by said Court in the above-stated cause, November Term, 1915, as the same is taken from and compared with the original now remaining on file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed my Official Seal at Trenton, this Thirty-first day of January, A. D. 1916.

[Seal of the Secretary of the State of New Jersey.]

THOMAS F. MARTIN,
Secretary of State.

265 [Endorsed:] New Jersey Court of Errors and Appeals, November Term, 1915. Between Olivit Brothers, a Corporation, Plaintiff and Respondent, vs. The Pennsylvania Railroad Company, Defendant and Appellant. Opinion.

266 New Jersey Court of Errors and Appeals.

OLIVIT BROTHERS, a Corporation, Plaintiff-Appellee,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant-Appellant.

Action at Law. (64 Counts.)

On Appeal from Supreme Court Rule on Affirmance.

This cause having been duly argued at the June Term, 1915, of this Court by Queen & Stout of Counsel for the Appellee, and Vredenburgh, Wall & Carey of Counsel for the Appellant, and the Court having considered the same, and finding no error in the record or proceedings in the Supreme Court:

It is thereupon ordered and adjudged that the said judgement of the Supreme Court be affirmed with costs; and that the record be remitted to the Supreme Court to be proceeded with in accordance with this judgment and the practice of said Court.

On Motion of Queen & Stout, Attorneys for Appellee.

Filed Feb. 11, 1916. Thomas F. Martin, Clerk.
Record Remitted to New Jersey Supreme Court Feb. 23, 1916.

267 State of New Jersey.

[Vignette.]

Department of State.

I, Thomas F. Martin, Secretary of State of the State of New Jersey, and ex-officio Clerk of the Court of Errors and Appeals in the last resort in all causes, do hereby Certify that the foregoing is a true copy of Rule on Affirmance, in re Olivet Brothers, a Corporation, Plaintiff-Appellee, vs. The Pennsylvania Railroad Company, Defendant-Appellant, as the same is taken from and compared with the original Filed Feb. 11, 1916, now remaining on file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the Official Seal of said Court at Trenton, this twenty-seventh day of May, A. D. 1916.

[Seal of the Secretary of the State of New Jersey.]

THOMAS F. MARTIN,
Secretary of State.

268 [Endorsed:] New Jersey Court of Errors and Appeals, Between Olivet Brothers, a Corporation, Plaintiff-Appellee, vs. The Pennsylvania Railroad Company, Defendant-Appellant. Copy of Rule.

269 State of New Jersey.

[Vignette.]

Department of State.

I, Thomas F. Martin, Secretary of State of the State of New Jersey, and ex-officio Clerk of the Court of Errors and Appeals in the last resort in all causes, do hereby certify that the foregoing is a true copy of the complete record on appeal to said Court, in re Olivit Brothers, a Corporation, Plaintiff-Appellee, vs. The Pennsylvania Railroad Company, Defendant-Appellant, as the same is taken from and compared with the original now remaining on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the Official Seal of said Court, at Trenton, this Twenty-fourth day of June, A. D. 1916.

[Seal of the Secretary of the State of New Jersey.]

THOMAS F. MARTIN,
Secretary of State.

270 Supreme Court of the United States.

No. 577.

OLIVIT BROTHERS, a Corporation, Plaintiff, Defendant in Error,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant, Plaintiff in Error.

In Error to the Supreme Court of the State of New Jersey, Oct. Term, 1916.

(64 Counts Case.)

No. 578.

ISAAC W. CARR and FANNIE G. ESTES, Partners Doing Business as ISAAC W. CARR & Co., Plaintiffs, Defendants in Error,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant, Plaintiff in Error.

In Error to the Supreme Court of the State of New Jersey, Oct. Term, 1916.

Stipulation.

It is hereby stipulated by and between the attorneys of all the above parties, that both of the above stated causes were tried upon

the same testimony in the Hudson Circuit of the New Jersey Supreme Court, and were heard together upon the same record on appeal to the New Jersey Court of Errors and Appeals; and that they may be likewise argued together upon one printed record in the Supreme Court of the United States, without requiring the printing of separate Transcripts of Records for such argument, the title of both causes to be set forth therein, together with the pleadings, decisions, judgments and other proceedings in each cause, and the testimony and exhibits, which pertain to both causes; and
271 that the parts of the records mentioned in the following paper marked "Statement", shall constitute the parts of the records to be printed as the Transcript of Record for argument in these causes.

Dated August 9, 1916.

ALBERT C. WALL,
Attorney of Respective Plaintiffs in Error.
GEO. S. HOBART,
Attorney of Respective Defendants in Error.

272 [Endorsed:] Supreme Court of the United States. Olivit Brothers, a Corporation, Plaintiff, Defendant in Error, vs. The Pennsylvania Railroad Company, Defendant, Plaintiff in Error. In Error, &c., Oct. Term, 1916. No. 577. Isaac W. Carr and Fannie G. Estes, Partners, &c., Plaintiffs, Defendants in Error, vs. The Pennsylvania Railroad Company, Defendant, Plaintiff in Error. In Error, &c., Oct. Term, 1916. Stipulation. Albert C. Wall, Attorney of Pl'tff in Error, 1 Exchange Place, Jersey City, N. J.

273 Supreme Court of the United States.

In Error to the Supreme Court of the State of New Jersey, October Term, 1916.

No. 577.

OLIVIT BROTHERS, a Corporation, Plaintiff, Defendant in Error,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant, Plaintiff in Error.

Statement.

To the Honorable the Justices of the Supreme Court of the United States:

The plaintiff in error states that it intends to rely on all the errors assigned; and that the parts of the record which it thinks necessary for the consideration thereof are:

1. Writ of Error from the Supreme Court of the United States; petition for writ; assignment of errors; prayer for reversal; bond, and citation.

2. Notice of Appeal from Supreme Court of New Jersey to Court of Errors and Appeals.
3. Grounds of Appeal.
4. Complaint.
5. Motion to consolidate causes.
6. Answer.
7. Amendments to Answer and Order to Amend.
8. Reply.
9. Postea.
10. Judgment of Supreme Court of New Jersey.
11. Interrogatories.
274 12. Notice to Strike out Interrogatories.
13. Order Striking out Interrogatories.
14. Stipulations, documentary evidence, exhibits and testimony at trial.
15. Rule 1, Southern Classification.
16. Motion to Direct Verdict for defendant.
17. Statements of damages.
18. Judge's Charge at trial in Hudson Circuit of Supreme Court of New Jersey.
19. Defendant's Requests to Charge.
20. Defendant's exceptions or objections.
21. Plaintiff's Exhibits P-1 and P-7.
22. Defendant's Exhibits, D-1.
23. Opinion of New Jersey Court of Errors and Appeals.
24. Judgment of New Jersey Court of Errors and Appeals and Remittitur.
25. Order of Supreme Court of New Jersey on filing of Remittitur.
26. Stipulation and Statement of August 9, 1916.

ALBERT C. WALL,
Attorney of Plaintiff-in-Error.

Dated August 9, 1916.

275 [Endorsed:] Supreme Court of the United States. Olivit Brothers, a Corporation, Plaintiff, Defendant-in-Error, vs. The Pennsylvania Railroad Company, Defendant, Plaintiff-in-Error. In Error to the Supreme Court of the State of New Jersey, Oct. Term, 1916. No. 577. Statement. Service of a true copy of within Statement is acknowledged this 9th day of August, 1916. Geo. S. Hobart, Attorney of Defendant in Error. Albert C. Wall, Esq., Attorney of Plaintiff in Error, 1 Exchange Place, Jersey City, N. J.

276 Supreme Court of the United States.

No. 578.

ISAAC W. CARR and FANNIE G. ESTES, Partners Doing Business as ISAAC W. CARR & Co., Plaintiffs, Defendants in Error,

vs.

THE PENNSYLVANIA RAILROAD COMPANY, Defendant, Plaintiff in Error.

In Error to the Supreme Court of the State of New Jersey, Oct. Term, 1916.

Statement.

To the Honorable the Justices of the Supreme Court of the United States:

The plaintiff in error states that it intends to rely on all the errors assigned; and that the parts of the record which it thinks necessary for the consideration thereof are:

1. Writ of Error from the Supreme Court of the United States; petition for writ; assignment of errors; prayer for reversal; bond, and citation.
2. Notice of Appeal from Supreme Court of New Jersey to Court of Errors and Appeals.
3. Grounds of Appeal.
4. Complaint.
5. Answer.
6. Reply.
7. Stipulation.
8. Judgment.

277 9. Consent that trial record in case of Olivit Brothers, a corporation, vs. The Pennsylvania Railroad Company (64 Counts Case) be the trial record in this case.

10. Stipulation and Chart.
11. Statement re Bills of Lading.
12. Opinion of New Jersey Court of Errors and Appeals.
13. Judgment of Court of Errors and Appeals and Remittitur.
14. Order of Supreme Court of New Jersey on filing of Remittitur.
15. Stipulation and Statement of August 9, 1916.

ALBERT C. WALL,
Attorney of Plaintiff in Error.

Dated August 9, 1916.

278 [Endorsed:] 577/25407. 578/25408. Supreme Court of the United States. Isaac W. Carr and Fannie G. Estes, Partners Doing Business as Isaac W. Carr & Co., Plaintiffs, Defendants in Error, vs. The Pennsylvania Railroad Company, Defendant, Plaintiff in Error. In Error to the Supreme Court of the State of New Jersey, October Term, 1916. No. 578. Statement. Service of a

true copy of within Statement is acknowledged this 9th day of August, 1916. Geo. S. Hobart, Attorney of Defendants in Error. Albert C. Wall, Esq., Attorney of Pl't'ff in Error, 1 Exchange Place, Jersey City, N. J.

279 [Endorsed:] File No. 25407, 25408. Supreme Court U. S., October Term, 1916. Term Nos. 577 and 578. The Pennsylvania Railroad Co., Plaintiff in Error, vs. Olivit Brothers. The Pennsylvania Railroad Co., Plaintiff in Error, vs. Isaac W. Carr & Company. Stipulation of counsel as to printing records, and designation by plaintiff in error of parts of records to be printed. Filed August 17th, 1916.

Endorsed on cover: File No. 25,407. New Jersey Supreme Court. Term No. 577. The Pennsylvania Railroad Company, plaintiff in error, vs. Olivit Brothers. Filed July 17, 1916. File No. 25,407.

PENNSYLVANIA RAILROAD COMPANY *v.* OLIVIT BROTHERS.

ERROR TO THE SUPREME COURT OF THE STATE OF NEW JERSEY.

No. 577. Argued April 9, 10, 1917.—Decided April 30, 1917.

In an action against an interstate carrier for damage to goods shipped on a through bill of lading, the questions, (1) whether under the Carmack Amendment the lawful holder of the bill of lading may sue without proving ownership of the goods, (2) whether in view of stipulations in the bill of lading limiting liability there was evidence of negligence upon the part of the carrier sufficient to go to the jury, and (3) whether a recovery of freight paid the carrier by the shipper

was allowable,—are questions which this court may review in a case coming from a state court.

Under the Carmack Amendment the lawful holder of the bill of lading may sue the carrier for loss or damage to the goods without proving ownership of the goods; § 8 of the Interstate Commerce Act, 24 Stat. 382, in providing generally for liability of the carrier to "the person or persons injured" is not in conflict with this specific meaning of the amendment.

In an action against a carrier for damage to goods caused by delay in forwarding and delivery, where the carrier proves a strike and resulting congestion of traffic which, under the bill of lading, exempts it from liability if due care was observed to meet the situation, a refusal of the court to charge that the burden is on plaintiff to prove that such care was not exercised is at most harmless error when followed by instructions properly explaining that the carrier is not responsible for delay resulting from the strike, nor liable if not negligent in forwarding and delivering the goods, that such negligence is not presumed, and that the burden of proving it is on the plaintiff.

Where a carrier defended upon the ground that delay in forwarding and delivering goods was due to proven conditions of traffic beyond its control due to a strike, evidence that the goods were received for shipment after the strike was over and that the delay was caused by preferring other goods in delivery, *Held*, sufficient evidence of negligence to go to the jury.

When carrier and shipper agree that the basis for measuring damages for loss or damage to goods shall be their value at place and time of shipment, the amount of freight paid upon delivery may be added to the depreciation of such value caused by the carrier's default.

Allowing the shipper to recover the freight paid is not objectionable as a rebate, preference or discrimination, where there is no attempt to evade the Interstate Commerce Act.

Where goods are brought to destination in a damaged condition and sold at less than their value at shipment, the carrier is liable to refund freight paid if the damage resulted from its negligence.

88 N. J. L. 376, affirmed.

THE case is stated in the opinion.

Mr. Frederic D. McKenney, with whom *Mr. Albert C. Wall*, *Mr. John A. Hartpence* and *Mr. John Spalding Flannery* were on the briefs, for plaintiff in error:

The case is governed by the Act to Regulate Commerce,

with amendments. The rights and immunities, duties and obligations of the parties, are therefore determined by federal law. *St. Louis &c. Ry. Co.* v. *McWhirter*, 229 U. S. 265, 274–277; *Norfolk Southern R. R. Co.* v. *Ferebee*, 238 U. S. 269–273; *Southern Ry. Co.* v. *Prescott*, 240 U. S. 632; *Cincinnati &c. Ry. Co.* v. *Rankin*, 241 U. S. 319.

The right to sue follows the title to the goods. *Klesea* v. *Mfg. Co.*, 55 N. J. L. 320, 323; 3 Hutchinson on Carriers, 3d ed., §§ 1304, 1305, 1315, 1316; 6 Thomp. on Negligence, 2d ed., 1905, § 7422, p. 461; 4 Elliott on Railroads, 2d ed., § 1692, p. 755; *Levy* v. *Weir*, 77 N. Y. Supp. 917.

Under § 8 of the Act to Regulate Commerce it is to the person "injured" that the carrier is liable. This can only mean the owner, and the expression "lawful holder" in the Carmack Amendment should be interpreted accordingly.

The trial court erred as to the burden of proof.

There was no evidence of negligence to submit to the jury. The issue was confined to neglect in transporting the goods. This eliminates any inference of negligence from receipt of the goods after the strike was over. It was the right and indeed the duty of defendant to deliver the more perishable freight, peaches, as well as the watermelons. 2 Hutchinson on Carriers, 3d ed., § 649.

After the defendant had proved the excepted cause in the bill of lading as the proximate cause of the delay, the burden was on the plaintiff to show negligence of the defendant in the handling under that excepted cause, or that the damage could have been averted, notwithstanding the existence of the excepted cause, by the use of reasonable skill and diligence. *Clark* v. *Barnwell*, 12 How. 272; *Cau* v. *Texas & Pacific Ry. Co.*, 194 U. S. 427; *Southern Ry. Co.* v. *Prescott*, 240 U. S. 632; *Michaels* v. *Adams Express Co.*, 71 N. J. L. 41; *Transportation Co.* v. *Downer*, 11 Wall. 130; *The Glenlochy*, 226 Fed. Rep. 971, 972. In *New Orleans & Northeastern R. R. Co.* v. *National Rice Milling*

Co., 234 U. S. 80, there was a distinct finding of negligence by the state court based on evidence.

Mr. Edward P. Stout, with whom *Mr. George S. Hobart* was on the briefs, for defendant in error:

There is no federal question. As to proof of ownership the Carmack Amendment is decisive. As to negligence, the verdict supported by the decision of the state Supreme Court is a conclusive finding of fact binding on this court. *Baltimore & Ohio R. R. Co.* v. *Whitacre*, 242 U. S. 169; *Baugham* v. *New York, Phila. & Norfolk R. R. Co.*, 241 U. S. 237; *Seaboard Air Line Ry.* v. *Renn*, 241 U. S. 290; *Great Northern Ry. Co.* v. *Knapp*, 240 U. S. 464; *New Orleans & Northeastern R. R. Co.* v. *National Rice Milling Co.*, 234 U. S. 80, and other cases.

The contrary cases cited by defendant involve construction of federal law, infringement of federal right by a rule of practice, etc. As to plaintiff's right to sue as lawful holder of the bills of lading, see *Adams Express Co.* v. *Croninger*, 226 U. S. 491, 506; *Kansas City Southern Ry. Co.* v. *Carl*, 227 U. S. 639.

Section 8 of the Commerce Act creates liability for violations of that act; the Carmack Amendment creates liability for loss or damage to goods. The two things are distinct and § 8 has no application to this case. *Atlantic Coast Line R. R. Co.* v. *Riverside Mills*, 219 U. S. 186, 208.

There was no error as to burden of proof.

If there is any evidence of negligence which should have been submitted to the jury, it is immaterial whether the testimony came from the defendant's or the plaintiff's witnesses. *New Orleans & Northeastern R. R. Co.* v. *National Rice Milling Co.*, 234 U. S. 80, 86.

The strike was not the proximate cause of the plaintiff's damages.

When a carrier relies upon the excepted cause, either at common law or under contract, it must show, in order to

excuse itself, that the excepted cause is the sole and proximate cause of the injury. *New Brunswick Steamboat Co.* v. *Tiers*, 24 N. J. L. 697; *Reid* v. *Evansville &c. R. Co.*, 10 Ind. App. 385; *Merritt* v. *Earle*, 29 N. Y. 115; *King* v. *Shepard*, 3 Story (U. S.) 349, 14 Fed. Cas. No. 7804.

The negligence of the defendant was clearly established.

It is obvious from the acts and conduct of the defendant that it was for the jury to say whether the defendant performed the duty imposed upon it by law to deliver the watermelons within a reasonable time. *Carr* v. *D., L. & W. R. R. Co.*, 81 N. J. L. 532; *Burr* v. *Adams Express Co.*, 71 N. J. L. 263, 269.

It was the defendant's duty to inform the shippers that it would not deliver the watermelons within a reasonable time. Having failed to do this, it must answer for the consequences of the delay. *Helliwell* v. *Grand Trunk Ry. Co.*, 7 Fed. Rep. 68; *Tierney* v. *N. Y. C. & H. R. R. Co.*, 76 N. Y. 305; *Carr* v. *D., L. & W. R. R. Co.*, 81 N. J. L. 532.

Plaintiffs were entitled to recover the freight paid by them as a part of their damages. The true meaning of a stipulation in a bill of lading limiting the value of the property to the place and time of shipment is discussed in the following cases and the courts held that where the property was injured by the carrier the freight paid by the shipper should be recovered as part of the damages. *Pearse* v. *Quebec S. S. Co.*, 24 Fed. Rep. 285; *Brown* v. *Cunard S. S. Co.*, 147 Massachusetts, 58; *Pierce* v. *Southern Pacific Co.*, 120 California, 156; *Horner* v. *Missouri Pacific Ry. Co.*, 70 Mo. App. 285; *Kelly* v. *Southern Ry. Co.*, 84 S. Car. 252; *New York, Phila. & Norfolk R. R. Co.* v. *Peninsula Produce Exchange*, 240 U. S. 34.

MR. JUSTICE MCKENNA delivered the opinion of the court.

This is a consolidation of actions, each action expressed in a number of counts and each count praying for the re-

covery of the sum of $500 for a carload of watermelons received, as it is alleged, and accepted by the railroad company to be transported and delivered within a reasonable time to plaintiff at Jersey City, New Jersey, and that by reason of the failure so to transport and deliver a large number of the melons were wholly lost and the remainder delivered in a bad and damaged condition.

The car numbers are given, the places of receipt, all of which were in North Carolina, and the dates all between July 26 and August 2, 1912, both dates inclusive.

The answers of defendant denied the allegations of the complaint and set up besides the following defenses: If the property came into the hands of defendant for the purpose of transportation it did so as to each and every count of the complaint under the terms and conditions of a certain bill of lading issued to plaintiff by the initial carrier of the property pursuant to the provisions of the Interstate Commerce Act constituting an express agreement whereby the defendant was to be relieved from any and all liability for damage to the property resulting from delay in transportation and delivery if the delay was caused by (a) a strike or strikes among defendant's employees; (b) an accumulation of freight at any point; (c) or by any other cause or causes over which defendant had no control.

It is alleged that a strike did take place among defendant's employees and continued from July 9, 1912, to the twenty-first of that month, which strike was the cause of the alleged delay; also that an accumulation of freight did occur at Jersey City which continued from July 9 to August 15 and beyond.

It is further alleged as a defense that no claim for the loss or damage to the property was made in writing, as required by the respective bills of lading, of defendant at the point of delivery of the property within ten days after its delivery, or after due time for its delivery to plaintiff,

though it was agreed between plaintiff and defendant that such claim should be made at the time, place and in the manner mentioned.

Nor was there any claim for such loss or damage made in writing to defendant at the point of delivery or point of origin within four months after the delivery of the property or after a reasonable time for delivery, though it was expressly agreed that such claim should be made at the time, place and in the manner mentioned and if not so made defendant should not be liable.

It will be observed, therefore, that the basis of the action is that certain carloads of watermelons were received for shipment by defendant at certain places in North Carolina for transportation to and delivery at Jersey City, New Jersey, and that defendant failed to transport and deliver the same within a reasonable time, in consequence of which a large number of the melons were lost and the others delivered in a bad condition.

In point of fact the melons were not delivered to defendant in North Carolina but in such State to a carrier with which defendant had connections and were delivered to defendant at Edgemoor, Delaware, to be transported from there to Jersey City, and were so transported.

The melons were transported on through bills of lading issued by the initial carrier, which contained the stipulations upon which the defenses are based, to-wit: (1) That the delay in transportation and delivery was caused by a strike accompanied by demonstrations of violence over which defendant had no control and against which it could not contend; (2) that there was a congestion of freight due to causes beyond its control; and (3) that claims for damages were not made within the time required by the bills of lading—that is, within ten days in some cases, thirty days in others, and four months in others.

The ultimate basis of these defenses is the Carmack

Amendment to the Interstate Commerce Act. What this amendment requires of shipper and carrier becomes the question in the case.

The case involves, as we have said, a number of actions tried together and submitted to one jury. Plaintiff was plaintiff in all of them and obtained judgment which was affirmed by the Court of Errors and Appeals on the authority of another case of like kind.

There was a stipulation which concentrated the issues and removed from controversy the amounts involved. For instance, as to the latter it was stipulated that the value of the melons at the time and place of shipment was $13,465.00 and that they were sold at the place of delivery for $8,895.00, being the best price which could be obtained for them owing to their damaged condition. And it was further stipulated that the freight charges paid by plaintiff amounted to the sum of $5,484.59.

As to the other elements it was stipulated that the melons were received and accepted by defendant at Edgemoor, Delaware, for transportation to Jersey City, New Jersey, in accordance with the bills of lading; that the usual and customary time for transportation was about seven hours under the most favorable circumstances; that plaintiff was at the time of bringing the actions and is now the lawful holder of the bills of lading; that the melons were received at Edgemoor by defendant in apparently good order but were in a damaged condition when delivered to plaintiff at defendant's delivery yard at Jersey City, and that claims for damages were duly made in writing as required by the bills of lading.

The cases are designated as the "64-count case," the "13-count case," and the "11-count case." All of the bills of lading in the "64-count case," one in the "13-count case" and four in the "11-count case" contain a provision exempting the carrier from liability for loss or damage resulting "from riots or strikes." Twelve of the

bills of lading in the "13-count case" and seven in the "11-count case" provide that the carriers should "not be liable for any injury to, or decay of, fruits and vegetables, or other perishable freight, due to detention or delay occasioned by an accumulation of freight at any point . . . or to any other causes over which the carriers have no control." And there is difference in times of demands.

A motion is made to dismiss on the ground that no federal question appears in the record or, alternatively, if one appears, it is without merit. In support of the contentions it is said the questions in the case are: (1) Whether, it being stipulated that plaintiff was the holder of the bills of lading, it was the owner of the melons at the time the shipments were made; (2) whether there was any evidence of negligence of defendant which should have been submitted to the jury, and (3) whether plaintiff was entitled to recover the freight paid by it.

The first question involves the Carmack Amendment and, considering it, the Court of Errors and Appeals decided that "any lawful holder of a bill of lading issued by the initial carrier pursuant to the Carmack Amendment . . . upon receiving property for interstate transportation, may maintain an action for any loss, damage or injury to such property caused by any connecting carrier to whom the goods are delivered." Citing *Adams Express Co.* v. *Croninger*, 226 U. S. 491.

We are not prepared to say that a contest of this view is frivolous, and the motion to dismiss is denied. Besides, it is contended that the shipments having been in interstate commerce they are subject to and governed by the Interstate Commerce Act.

Coming to the merits of the question, however, we concur with the Court of Errors and Appeals in its construction of the Carmack Amendment. It provides: "That any common carrier . . . receiving property for transportation from a point in one State to a point in

another State shall issue a receipt or bill of lading therefor and shall be liable to the *lawful holder* [italics ours] thereof for any loss, damage, or injury to such property caused by it. . . ."

The crucial words are "lawful holder." Defendant contends that they mean "the owner or some one shown to be duly authorized to act for him in a way that would render any judgment recovered in such an action against the carrier *res adjudicata* in any other action." And § 8 of the Interstate Commerce Act is referred to as fortifying such view. It provides that "such common carrier shall be liable to the person or persons injured" in consequence of any violations of the act.[1]

To accept this view would make § 8 contradict the Carmack Amendment (§ 20), it having only a general purpose, whereas the purpose of the amendment is special and definitely expresses the lawful holder of the bill of lading to be the person to whom the carrier shall be liable "for any loss, damage, or injury" to property caused by it. *Adams Express Co.* v. *Croninger*, 226 U. S. 491.

The next contention of defendant is that there was error in applying the burden of proof upon the motion to direct a verdict for defendant.

The grounds of the contention urged at the trial and now repeated are that by certain of the bills of lading the carrier is relieved from liability in case of a strike, by certain others in case of delays occasioned by causes beyond

[1] "Sec. 8. That in case any common carrier subject to the provisions of this act shall do, cause to be done, or permit to be done any act, matter, or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case." 24 Stat. 382.

its control, and by others in case of an accumulation of freight proved to be a matter beyond the control of the carrier. And these causes having been proved, it is contended the carriers were brought within the protection of the stipulation and it became incumbent upon plaintiff to show that defendant in one way or another failed "to handle the situation at that time in a way which was free from negligence." It was and is contended that the whole issue was shifted "from the general allegation of negligence to the allegation that the injury was caused because the defendant failed to perform the duty which it was obliged to perform under the law." Counsel concede that the whole question was whether when the proof was that "there was the excepting cause," defendant did what it "should have done to meet the situation," and the burden was upon the plaintiff to show that the carrier did not do what it "ought to have done."

The court rejected the contention. It replied that merely proving an accumulation of freight or a strike did not shift the burden of proof, but that to complete its defense the carrier must show that the strike or the accumulation of freight caused the delay in executing its contract to deliver the property.

If we should grant that the ruling was technically erroneous its effect in the case can hardly be estimated in view of the instructions of the court to the jury entirely considered. They are too long to quote, but we may say of them that they were very carefully expressed to give the jury the elements of decision.

The court told the jury that defendant had proved a cause beyond its control, that is, a strike, and at the request of defendant further instructed that if no negligence on the defendant's part was shown defendant was not liable and that the burden of proving such negligence was upon the plaintiff. A like instruction was given as to any cause beyond defendant's control, including an

accumulation of freight, if reasonable care was exercised by defendant to relieve the situation, that negligence was not to be presumed but must be affirmatively proved and that the burden of proving it was upon plaintiff. "The question is," the court said, "whether or not, in the light of what occurred over there, the defendant in this case has been shown by the greater weight of the evidence to have been negligent in the forwarding and the delivery of this freight. If it has been, why these plaintiffs are entitled to recover and to have you assess their damages, unless some of these other defenses have been made out by the greater weight of the evidence. If the defendant has not been shown to have been negligent in the particular indicated, why then manifestly the defendant is not responsible and the verdict in all the cases where these rules apply would have to be for the defendant."

Defendant, however, contended that there was not sufficient evidence of negligence to justify the submission of the case to the jury. Counsel, in attempted support of the contention, select certain elements in the case, ignoring others and their probative value. That is, counsel ignore the fact of which there was evidence that the melons were received for shipment after the strike was over, and the fact of which there was evidence that the delay in delivery was caused by the use by defendant of tracks where melons were usually delivered for the delivery of peaches usually delivered elsewhere, to the exclusion of melons, which were placed in storage tracks at the "meadows."

The fourth contention is that plaintiff should not recover as part of its damages the freight paid upon delivery at destination.

The contention is rested upon the prohibition of the Interstate Commerce Act against deviation from the filed tariffs and schedules and against rebates and undue preferences and discriminations. It is not asserted in the

present case that there was an evasion of the statute or an attempt to evade but that the possibility of such result makes the recovery of freight illegal. It is urged, besides, that the melons were carried to destination and were there sold by plaintiff or on its account and that freight thereby accrued and was properly paid. For which 2 Hutchinson on Carriers, 3d ed., § 802, is cited. But the cited authority shows that to be the rule when the loss or damage results from no fault or negligence of the carrier. And, besides, to the contentions the plaintiff opposes the terms of the bills of lading, they providing that the amount of loss or damage for which a carrier is liable "shall be computed on the basis of the value of the property (being the *bona fide* invoice price, if any, to the consignee, including the freight charges, if prepaid) at the place and time of shipment. . . ."

Some of the bills of lading do not contain this provision, but it was agreed at the trial that the proper measure of damages was to be computed upon the basis of the value of the property at the place and time of shipment and that such measure should be read into all of the bills of lading. As plaintiff further says, to recover the damages sustained by it based upon this value, plaintiff must receive from defendant the difference between this value and the proceeds of the sale, and the freight paid. In this we concur, and therefore there was no error in including in the recovery such freight. *Shea* v. *Minneapolis, St. Paul & Sault Ste. Marie Ry. Co.*, 63 Minnesota, 228; *Davis* v. *New York, Ontario & Western Ry. Co.*, 70 Minnesota, 37, 44; *Horner* v. *Missouri Pacific Ry. Co.*, 70 Mo. App. 285, 294; *Tibbits & Son* v. *Rock Island & Peoria Ry. Co.*, 49 Ill. App. Reps. 567, 572. The plaintiff was no more than made whole.

Affirmed.